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IN THE

# Supreme Court of the United States

October Term, 1972

No. 72 - 847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,
Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,
Appellees.

## JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

JOHN P. FRANK
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100 West Washington Street
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Counsel for Appellants

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IN THE

# Supreme Court of the United States

October Term, 1972

No._____

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

## JURISDICTIONAL STATEMENT ON APPEAL FROM THE SUPREME COURT OF THE STATE OF ARIZONA

Appellants* appeal from the decision of the Supreme Court of Arizona of June 30, 1972, rehearing denied September 12, 1972. They submit this statement to show that the Supreme Court of the United States has jurisdiction over this appeal and that substantial questions are presented.

### OPINION BELOW

The opinion of the Supreme Court of Arizona is reported at 108 Ariz. 373, 498 P.2d 461 (1972), attached hereto as Appendix A. The order denying the petition for rehearing, not reported, is attached hereto as Appendix B.

*The real parties in interest are named in the caption; nominal appellants, under Arizona practice, are the trial court and its judge. The three Supervisor appellees are also nominal.

## JURISDICTION

This action was brought in the state court, Maricopa County, Arizona, by appellants Memorial Hospital and Henry Evaro against the County. Memorial is a nonprofit hospital, and Evaro was a resident of Maricopa County who had resided there for less than one year. The sole question was whether the County was obligated to provide free medical care in the light of an Arizona statute, A.R.S. § 11-297 A, which conditions such care upon one year's residence. The trial court held the statute invalid with an opinion attached as Appendix C. The Supreme Court vacated this judgment with an opinion dated June 30, 1972, and denied rehearing on September 12, 1972. A notice of appeal, attached hereto as Appendix D, was filed in the Supreme Court of Arizona on October 12, 1972. This Court has jurisdiction under 28 U.S.C. § 1257(2).

## STATUTE INVOLVED

A.R.S. § 11-297 A is as follows:

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provision of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

## QUESTION PRESENTED

Does a statute of the State of Arizona requiring a one-year residence in a given county for welfare medical care conflict with the due process, equal protection, and privileges and immunities

clauses of the Fourteenth Amendment of the Constitution of the United States, with particular reference to the "right to travel"?

## STATEMENT OF THE CASE

Henry Evaro, an indigent, became a resident of Maricopa County, Arizona, in early June, 1971. On July 8, 1971, at a time when he was suffering from acute asthma and bronchial illness,* he was referred by his attending physician to the plaintiff Memorial Hospital, a nonprofit institution in Maricopa County, Arizona. Under the Arizona statute, the proper procedure for Memorial, finding itself with an indigent patient who qualified for County care, was to request the County to accept the patient in the County Hospital. Such a request was made and acceptance of the patient was declined because of the one-year rule.

This action was instituted to determine whether Maricopa County was obligated to provide care for this indigent and to reimburse Memorial for the cost sustained as a result of the claimed wrongful exclusion from the County Hospital. Necessarily this required an adjudication of the validity of the Arizona statute which exempts counties from this obligation as to persons who have been residents for less than a year. The trial court held the statute unconstitutional, believing itself compelled to this result by the decision of this Court in *Shapiro v. Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). The principal case following *Shapiro* in Arizona was a three-judge district court opinion dealing with the identical question, *Valenciano v. Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), which held this same statute unconstitutional.

The Supreme Court of Arizona overruled the trial court, declining to follow the *Valenciano* decision. The federal question

*The statute permitted care without regard to residence in "emergency" situations, an exception not involved here since this was not an "emergency" patient.

was presented in the complaint at the trial court, is essentially the only matter considered there, and is the only matter considered by the State Supreme Court.

## THE QUESTIONS ARE SUBSTANTIAL

1. We deal with the flattest conceivable conflict. A.R.S. § 11-297 A has been declared unconstitutional by a three-judge district court in *Valenciano v. Bateman,* and has been upheld by the State Supreme Court in the instant case. *Valenciano* happens to deal with Pinal County in Arizona and the instant case happens to deal with adjacent Maricopa County. Under Arizona law, Supervisors are personally liable for illegal expenditures, A.R.S. § 11-641; *Pima County v. Anklam,* 48 Ariz. 248, 61 P.2d 172 (1936) (illegal payment for health care). We thus have a rule of law in Arizona under which the Supervisors of Pinal County are enjoined from obeying the statute while the Supervisors of Maricopa County must obey it and could be charged personally if they did not.

The conflict is almost as square with another three-judge district court decision, *Vaughan v. Bower,* 313 F. Supp. 37 (D. Ariz. 1970), invalidating the residence requirement of A.R.S. § 36-522, a one-year requirement for mental health care.

The instant case conflicts squarely with: (1) *Crapps v. Duvall County Hospital Authority,* 314 F. Supp. 181 (M.D. Fla. 1970), which also invalidates a one-year county residence requirement; and see also *Arnold v. Halifax Hosp. Dist.,* 314 F. Supp. 277 (M.D. Fla. 1970); (2) *Corkey v. Edwards,* 322 F. Supp. 1248 (W.D.N.C. 1971), a three-judge district court opinion holding unconstitutional a four-month health care statute.

2. A suggestion is made below that somehow the rule of law may be different where the residence requirement is measured by county geography instead of state geography. Cases holding to the contrary and applying the principles of the *Shapiro* rule to communities smaller than the states are: *King v. New Rochelle*

*Municipal Housing Authority,* 442 F.2d 646 (2d Cir. 1971), *cert. denied,* 404 U.S. 863 (striking down a five-year community residency requirement for admission to public housing); and *Cole v. Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970) (striking down a two-year community residency requirement for public housing). As Judge Waterman said in the *King* case, "it would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge the correlative constitutional right to travel within a state." 442 F.2d at 648.

3. So far as we have been able to discover, the decision below is the only case in the United States which has held that a one-year residency requirement for health care can outlast the decision of this Court in *Shapiro v. Thompson. Shapiro,* which dealt with welfare payments generally necessary for survival, is indeed hard to distinguish from the instant case in which the issue is medical care; as this Court said in *Shapiro,* the state may not condition on residence a denial of public benefits "upon which may depend the ability of the families to obtain the very means to subsist . . . food, shelter and other necessities of life." It would indeed be an odd constitutional limitation if a state cannot use residence to cause a person to suffer the pangs of hunger but can use it to permit him to suffer the pain of wheezing and gasping for breath, as in the case of the plaintiff.

As further illustrations that health care is regarded as covered by *Shapiro,* with express recognition of *Valenciano,* see *Besaw v. Affleck,* 335 F. Supp. 775, 780 (a three-judge court, D. R.I. 1971); *Opinion of the Justices,* 273 N.E.2d 879, 880 (Mass. 1971).

4. The particular decision here may be a local eccentricity, but the problem is universal. We abstain from the usual statistical proof as to migration of people throughout the United States, because the conventional case materials cited above show that this problem arises all over the country. For recent illustration of the

same problem in the area of voting, see *Dunn v. Blumstein*, 405 U.S. 330, 95 S. Ct. 995, 31 L. Ed. 2d 274 (1972).

5. The question is no abstraction either in terms of health care or dollars. Arizona is one of the fastest growing states in the Union. Appellee here estimated in the court below that the dollar cost to this county of providing medical care to indigents of the Evaro type would be about $2,500,000. That cost will either be borne by the taxpayers, as we contend is proper, or the indigents will continue to be left in the private hospitals with the costs necessarily being spread over the paying private patients and their insurers. The only remaining alternative is that these persons will get no care at all until they are at death's door and have become "emergencies," and this, too often, happens now.

## CONCLUSION

The decision below warrants summary reversal. In any case, this Court should note probable jurisdiction of this appeal.

Respectfully submitted,

JOHN P. FRANK
WALTER CHEIFETZ
MARY M. SCHROEDER
Counsel for Appellants

December, 1972.

**APPENDIX A**

IN THE
SUPREME COURT OF THE
STATE OF ARIZONA
In Banc

| | |
|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors,<br>Petitioners,<br>v.<br>SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST,<br>Respondents. | No. 10750 |

SPECIAL ACTION
PRAYER FOR RELIEF GRANTED
JUDGMENT VACATED

| | |
|---|---|
| Moise Berger, Maricopa County Attorney<br>by William Carter, Deputy County Attorney<br>Attorneys for Petitioners | Phoenix |
| Lewis & Roca<br>by Walter Cheifetz<br>Attorneys for Respondents | Phoenix |

HOLOHAN, Justice:

Petitioner, the Board of Supervisors of Maricopa County, filed this petition for special action to seek a review of the order and judgment of the Superior Court compelling the Petitioner to accept the Respondent Evaro as a patient at the Maricopa County General Hospital. The Respondent Superior Court ruled that the residency requirement in A.R.S. § 11-297 was unconstitutional, and that all persons in the county who were indigent would be entitled to medical care at the county hospital irrespective of the length of residence within the county. Because of the importance of the issues involved and the need for a prompt resolution of the problem, the Petition was accepted for determination by this Court.

The parties have stipulated the essential facts. They have agreed that the Respondent Evaro was an indigent person who required continued medical care for the preservation of his health and well being, but his medical condition did not constitute an emergency case needing immediate hospital or medical care. The Respondent Evaro had not been a resident of Maricopa County for 12 months preceding the requirement for medical care or at the time of the filing of the action in the Superior Court. He was treated at Memorial Hospital, and the hospital joined with Evaro in the action in the Superior Court to compel the Board of Supervisors to accept the Respondent as a patient at the County General Hospital, and to pay the Respondent Memorial Hospital the sum of $1,202.60 for hospital care furnished Evaro up to the time of the filing in the Superior Court.

Substantially, the same facts as here presented were submitted to the Superior Court, and that court ruled in favor of the position of the Respondents holding that the residency requirement found in A.R.S. § 11-297 was unconstitutional and void and, therefore, the Petitioners were ordered to accept Evaro as a patient at the County General Hospital where his medical care

was to be provided, and judgment was given against the Board of Supervisors and in favor of Memorial Hospital.

The sole question presented in this cause is whether the residency requirement of the Statute violates the Federal Constitution.

A.R.S. § 11-297 provides:

> "A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief * * * without first filing * * * a statement * * * that he is an indigent * * * and that he has been a resident of the county for the preceding twelve months."

The principal case relied upon by Respondents is that of Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969). The Supreme Court of the United States declared a one year residency requirement of a state for eligibility for welfare to be unconstitutional. The U. S. Supreme Court held that such a residency requirement constituted an "invidious" classification which interfered with a fundamental right, the right to travel, and, in the absence of a compelling and substantial state interest, such residency requirement cannot stand.

While the *Shapiro* case dealt with eligibility for welfare funds which were described as necessary to life and well being, various federal courts have extended the ruling to apply to a host of situations. This has largely resulted because of the limitation placed by the Court on the *Shapiro* holding. See Footnote 21 on page 638 of 394 U.S. It would seem that the matter is left for a case by case determination. A decision by the California Court of Appeals sustaining that state's residency requirement for tuition free education, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.Rptr. 260 (1969), was left standing when the U.S. Supreme Court, without opinion, dismissed the appeal, 396 U.S. 554, 90 S.Ct. 754, 24 L.Ed.2d 747 (1970). A similar decision by a three-judge panel upholding the Minnesota residency requirement

was affirmed by the U.S. Supreme Court without opinion, Starns v. Malkerson, 326 F.Supp. 234 (D.Minn., 1970), *aff'd* 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Following these authorities and others, we recently sustained the residency requirement of this state classifying students at the State Universities, and approved as constitutional the requirement that students with less than the required residency pay a greater tuition than the resident students. Arizona Board of Regents v. Harper, .... Ariz. ...., 495 P.2d 453 (1972)..

Recently, the U.S. Supreme Court in Dunn v. Blumstein, .... U.S. ...., 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), struck down the Tennessee one year residency for eligibility to vote as not furthering any compelling state interest and as being in violation of the equal protection clause of the Fourteenth Amendment. The Court found that the residence requirement in voting deprived citizens of two fundamental rights, the right to vote and the right to travel. In *Dunn,* as in *Shapiro,* the Court concludes that any classification which serves to penalize the exercise of a fundamental right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional.

Following the *Shapiro* decision, the precise issue presented in this cause was decided by the Arizona Court of Appeals in Board of Supervisors v. Robinson, 10 Ariz.App. 238, 457 P.2d 951 (1969), vacated by us as moot, 105 Ariz. 280, 463 P.2d 536 (1970), and in a three-judge federal case Valenciano v. Bateman, 323 F.Supp. 600 (D.Ariz., 1971). In each instance the court held the classification was unconstitutional.

The county residency requirement for non-emergency medical treatment does not discriminate in favor of residents of Arizona versus recent arrivals. The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied. The district court in *Valenciano*

was not impressed with this position, and their position was that there was no distinction between interstate and intrastate travel.

Whether the district court's rationale in *Valenciano* is sound or not is not terribly important. The main point is that the Legislature was not intent on interfering with interstate travel as was the fact in the *Shapiro* case. Nor does the matter in issue deal with such fundamental rights as speech or voting. Contrary to the Court of Appeals and the district court, we believe that this classification more properly falls within the permissible area of reasonable regulation as approved in Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). The U.S. Supreme Court held the Maryland maximum welfare grant regulation constitutional although the grant placed an absolute limit on the amount to be paid a dependent family regardless of size and actual need. The Maryland statute and regulations, as in a number of states, fix a standard of need for an eligible family, and the standard of need is increased with each additional person or child in the household subject to a maximum limit of $250 per month irrespective of the number of children in the family needing the assistance. The classification was upheld on the "reasonable basis" test. As the Court said in *Dandridge*:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v Natural Carbonic Gas Co., 220 US 61, 78, 5 LEd 369 377, 31 S Ct 337. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 US 61, 69-70, 57 LEd 730, 734, 33 S Ct 441. 'A statutory discrimination will not be set aside if any state of

facts reasonably may be conceived to justify it.' McGowan v Maryland, 366 US 420, 426, 6 LEd2d 393, 399, 81 S Ct 1101." 397 U.S. at p. 485.

The Legislature has placed the sole and exclusive responsibility for hospitalization and medical care of the indigent sick on county government. A.R.S. § 11-291. No particular standard is set to guide the counties other than that they may include in their budgets and tax levy such amount as is deemed necessary and adequate for the purpose. A.R.S. § 11-292.

The wide differences in county resources among the counties result in different economic ability to meet the needs of the residents within the county who need medical care. Some reasonable basis of determining the demands to be made on such county facilities or resources must exist if the county is to be able to budget and tax to carry out its responsibilities. The Legislature has chosen to use a county residency base. Our duty is not to decide whether that position is wise or whether it best fulfills the social need. Our duty is to determine whether it has rational basis "free from invidious discrimination." We believe that the statute is constitutional.

Petitioner argues also that there is a compelling interest of county government, especially Petitioner county, in the classification. Absent a residence requirement, any indigent sick person in the state could seek admission to Petitioner's hospital, the facilities being the newest and most modern in the state, and the resulant volume would cause long waiting periods or severe hardship on Petitioner county if it tried to tax its property owners to support the indigent sick of the state. The point, while perhaps overextended, raises a serious practical problem vital to the interests of the residents of Petitioner county. Should the development of modern and effective facilities be discouraged because such efforts attract an inordinately large group of users? How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer

but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate.

The Legislature may wish to change the present system of indigent medical care from county responsibility to state responsibility with the larger tax base, but it is not our function to decide the best means of accomplishing the solution to a particular social problem. This responsibility constitutionally rests with the Legislature.

We find the residency requirements of A.R.S. § 11-297 to be constitutional and a valid exercise of legislative power and, therefore, the judgment of the Superior Court in Cause No. C251236 is vacated.

Judgment vacated.

**APPENDIX B**

SUPREME COURT

STATE OF ARIZONA

PHOENIX 85007

September 13, 1972

| | |
|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors,<br>Petitioners,<br>v.<br>SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST,<br>Respondents. | Supreme Court No. 10750<br>Maricopa County No. C 251236 |

The following action was taken by the Supreme Court of the State of Arizona on September 12, 1972 in regard to the above-entitled cause:

"ORDERED: Petition for Rehearing — DENIED."

Certified copy of Order Granting Special Action Prayer for Relief and Vacating Superior Court Judgment issued this date.

CLIFFORD H. WARD, Clerk
By Mary Ann Topke
Deputy Clerk

TO:

John P. Frank, Esq., Lewis & Roca, 114 W. Adams, Phoenix 85003

Moise E. Berger, Maricopa County Attorney, 101 W. Jefferson, Phoenix 85003

Hon. Donald F. Froeb, Judge of Maricopa County Superior Court, 101 West Jefferson Street, Phoenix, 85003

Clerk, Court of Appeals, Division One, State Capitol, Phoenix 85007

West Publishing Company, 50 Kellogg Blvd., St. Paul, Minnesota 55102

## APPENDIX C

IN THE SUPERIOR COURT
OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

| | |
|---|---|
| MEMORIAL HOSPITAL and HENRY EVARO, Plaintiffs, v. BOARD OF SUPERVISORS, MARICOPA COUNTY, ARIZONA; and MARICOPA COUNTY, ARIZONA, Defendants. | Cause No. C-251236 MEMORANDUM OF DECISION AND ORDER |

This cause was presented to the court upon agreed facts and memorandum of law.

The sole question in the case is whether Section 11-297, Arizona Revised Statutes, is unconstitutional insofar as it requires in non-emergency cases that an indigent person be a resident of the county for the preceding twelve months before he can receive hospitalization or medical care at county expense.

The issue in this case is determined by the holding of the United States Supreme Court in *Shapiro v. Thompson,* 394 U.S. 618 (1969). The application of that case to the one-year residency requirement of the statute in question discloses that this statutory provision is violative of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. See also, *Vaughn v. Bower,* 400 U.S. 884, aff'g. memo. 313 F. Supp. 37 (D.C. Ariz. 1970) and *Valenciano v. Bateman,* 323 F.Supp. 600 (D.C. Ariz. 1971). cf. *Board of Supervisors, Pima County v. Robinson,* 10 Ariz. App. 238, 457 P.2d 951, *vacated as moot,* 105 Ariz. 280, 463 P.2d 563.

The one-year residency requirement is severable from the general statutory provisions for medical care to the indigent sick.

Therefore, in accordance with the foregoing,

IT IS ORDERED declaring that the words "for the preceding twelve months" in Section 11-297, A.R.S., render the statute unconstitutional and are therefore void.

IT IS FURTHER ORDERED that plaintiffs recover against defendants the sum of ONE THOUSAND TWO HUNDRED AND TWO AND 60/100 DOLLARS ($1,202.60), together with costs.

IT IS FURTHER ORDERED that the defendants accept plaintiff as a patient at the Maricopa County Hospital and to provide him with necessary medical care.

DATED this 23rd day of November, 1971.

/s/ DONALD F. FROEB

JUDGE

Copy of the foregoing
Memorandum of Decision
and Order mailed this
23rd day of November,
1971, to:

Mr. Walter Cheifetz
Lewis & Roca
114 West Adams Street
Phoenix, Arizona 85003
Attorneys for Plaintiffs

and

Mr. William Carter
Deputy County Attorney
604 County Administration Building
111 South Third Avenue
Phoenix, Arizona 85003
Attorney for Defendants

/s/ Rose M. Birri

Rose M. Birri

**APPENDIX D**

LEWIS AND ROCA
First National Bank Plaza
One Hundred West Washington Street
Phoenix, Arizona 85003
Telephone 602/262-5311
Attorneys for Respondents

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

| | |
|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors,<br>Petitioners,<br>vs.<br>SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD E. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST,<br>Respondents. | No. 10750<br>NOTICE OF APPEAL |

NOTICE IS HEREBY GIVEN that Respondents, Superior Court of the State of Arizona, in and for the County of Maricopa, the Honorable Donald E. Froeb, Judge thereof, and Memorial Hospital, an Arizona corporation, and Henry Evaro, real parties in interest, appeal to the Supreme Court of the United States from the decision of the Supreme Court of the State of

Arizona entered in the above entitled and numbered action by the Clerk on June 30, 1972, granting Petitioners" Special Action Prayer for Relief and vacating the judgment of the Superior Court in Cause No. C-251236 dated November 23, 1971, and from the order denying Respondents' petition for rehearing dated September 12, 1972, and from all of the prior proceedings and orders connected therewith. This appeal is taken pursuant to 28 U.S.C. §§ 1257(2) and 2101(c).

DATED this 12th day of October, 1972.

LEWIS AND ROCA
By MARY M. SCHROEDER

Mary M. Schroeder
Attorneys for Respondents
100 West Washington Street
Phoenix, Arizona 85003

72-847

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IN THE

SUPREME COURT OF THE UNITED STATES

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,
Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,
Appellees.

# MOTION TO AFFIRM

William Carter
Maricopa County Manager
Office
111 South Third Avenue
Phoenix, Arizona 85003

Counsel for Appellees

IN THE

SUPREME COURT OF THE UNITED STATES

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No. _____

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MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,

Appellees.

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# MOTION TO AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

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No. _____

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MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS,
B. W. BURNS and J. ROBERT STARK,
Supervisors,

Appellees.

MOTION TO AFFIRM

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## I. INTRODUCTION

Maricopa County, Arizona, and its supervisors Henry H. Haws, J. Robert Stark, Eldon R. Rudd, Robert K. Corbin, and Joe Eddie Lopez, Appellees,* join with Appellants in urging the Supreme Court of the United States to take jurisdiction in this case because of the important federal question presented, but respectfully request that this Court affirm the decision of the Supreme Court of the State of Arizona.

---

*The name of the Appellee B. W. Burns as nominal defendant has been deleted and the names Eldon Rudd, Robert K. Corbin and Joe Eddie Lopez inserted pursuant to Rule 48 Rules of Supreme Court because Burns is no longer a member of the Board of Supervisors of Maricopa County, Arizona. Rudd, Lopez and Corbin, together with Supervisors Henry H. Haws and Robert Stark now constitute the Maricopa County Board of Supervisors, nominal defendants in the action below.

## II. HISTORY AND STATUTES INVOLVED

Appellees accept Appellants' summarization of the lower court opinions and the statutes involved.

## III. ISSUES PRESENTED

The sole issue in this case is whether the State of Arizona may require that all persons receiving non-emergency medical care at the expense of a territorial subdivision of the state must have resided within that subdivision for one year or more.

In order to decide that issue, the Court must consider one or more of the three following underlying questions:

1. Does a one year durational residence requirement for receiving non-emergency medical care at public expense constitute an impediment to the right of interstate travel as set forth by this Court in Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969)?

If the answer to the preceding question is "No", as Appellees assert, the action of the Supreme Court of the State of Arizona must be affirmed, for the sole basis of this appeal is that this durational residence requirement constitutes an unlawful impediment to the right to engage in interstate travel. The position of the Appellees is that a restriction on the right to receive non-emergency medical care does not constitute such an impediment because it in no way interferes with the right of anyone to travel anywhere at anytime.

If this Court believes that such a residence requirement does constitute an impediment to the right of interstate travel, it must determine a second underlying issue.

2. Does the financial savings resulting from the Arizona durational residence statute constitute a compelling state interest? Appellees furnished to the courts below affidavits that the estimated cost to Appellees of abolishing the durational residence requirement for

non-emergency hospital care would be $2,500,000.00 for the first year. This sum constituted 13% of the amount budgeted for hospital care of the indigent during the fiscal year that the case was heard. To raise such an amount Appellees would have to increase the ad valorem property tax rate by 8.5% or reduce expenditures in other areas of public need.

Appellees recognize that this Court held in Shapiro v. Thompson, supra, that "fiscal expediency" did not constitute a compelling state interest. However, Appellees respectfully submit that an increase in public expenses of the magnitude cited above transcends mere fiscal expediency and constitutes a compelling state interest. These fiscal difficulties would seriously impede adequate county health services.

If the Court concludes that the increase in expenses cited above does not constitute a compelling state interest, it must then consider a final underlying issue.

3. The Arizona durational residency requirement in question requires that the person claiming medical care must have resided within the territorial subdivision of the State for one year. It excludes as ineligible persons who have resided in the State for more than one year, but have not resided in the territorial subdivision of the State for one complete year. Therefore, it makes no distinction between people who have moved from points within the State and people who have moved from points without the State and it applies in like manner to new and old residents of the State who have not completed one year's residence within a particular subdivision. Does this fact cure the alleged constitutional defect in the resident state by treating old and new residents of the state equally and requiring that both have completed a one year period of residence in the territorial subdivision?

4. One issue is not involved in this case, the right of an indigent to emergency health care. Emergency health care is provided to all citizens of the State of

Arizona at present, and this obligation is not contested.

## IV. REASONS FOR ASSUMING JURISDICTION

The decision of the Supreme Court of the State of Arizona conflicts directly with the decision of a three-judge panel of the United States District Court in Valenciano v. Bateman, 322 F. Supp. 600, (Dist. Ct. Az. 1971). The only form in which this conflict can be resolved is the Supreme Court of the United States. Appellees therefore join with Appellants in urging this Court to accept jurisdiction of the appeal and to decide the case on the substantive issues presented.

Footnote No. 21 in Shapiro v. Thompson, supra, indicates that subsequent cases involving residency issues will be decided on a case-by-case basis:

> We imply no view of the validity of waiting period or residence requirement determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or on the other, may not be penalties upon the exercise of the constitutional right of interstate travel. (394 U.S. at 638)

Dunn v. Blumstein, ____U.S. ____, 31 L.Ed.2d 274, 92 S.Ct. ____ (1972), with seven members of the Court participating, decided that a durational residency requirement for voting in Tennessee was unconstitutional. On the other hand, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.R. 260 (1969) and Starns v. Malkerson, 326 F.Supp. 324, (Minn. 1970), affirmed 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971) have upheld durational residency requirements for reduced tuition at state universities. In view of the cases which have in one way or another departed from

Shapiro, and Shapiro's suggestion of a case-by-case approach to the residency requirement, the residency requirement for non-emergency health care deserves consideration by this Court.

The State of Arizona has an unusual problem because the Arizona Supreme Court decision below conflicts with the district Court decision in Valenciano, supra. As a result the Supervisors of Pinal County are enjoined from obeying the Arizona statute in question, while the Supervisors of Maricopa County must obey it at the risk of personal liability. Finally, Justice Warren's comments in Shapiro apply to this case.

> Residence requirements do not create a flat prohibition (on travel), for potential welfare recipients may move from state to state and establish residence wherever they please. Nor is any claim made by appellees that residence requirements compel them to choose between the right to travel and another constitutional right. (394 U.S. at 648)

There is a compelling state interest in maintaining the residence requirement, an interest which is both fiscal and administrative. The reason is not only the $2,500,000.00 additional health cost to the residents of Maricopa County, who primarily support their hospital through their own taxes, but also the maintenance of existing adequate health services. Arizona has population characteristics different from those of the states involved in Shapiro. It has an extremely fluid population and its warm, dry climate attracts people throughout North America with asthmatic, respiratory and other health problems. The residence requirement is an absolute necessity to permit intelligent planning for the continuation of adequate health services in Maricopa County. Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment,

while the long-term effect would be that indigent persons throughout North America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency in Maricopa County. In either the long or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments.

Intrastate travel differs from interstate. Numerous cases, including Shapiro, imply that the commerce clause is the fountainhead of the constitutional right to travel. As Shapiro itself recognizes, this right stems from "the nature of our federal union." The right to travel basically thus reflects the right of the citizens of the several states to travel beyond state borders to the national capitol in Washington, D.C. to redress their grievances. Accordingly, the constitutional right to travel fundamentally views interstate travel within the federal union, rather than intrastate travel within the counties of one state. This conclusion is buttressed by the existing and constitutional residency requirements on county officials, such as district attorneys, mayors, sheriffs, aldermen, and supervisors, to name but a few of the officials subject to duration residency requirements in political subdivisions of a state. Furthermore, the fact that the monies involved in the instant case are not federal but rather county-raised suggests that the "federal" right to travel is not so directly involved as it was in Shapiro, where the travel was motivated by a desire to reap the benefits of federally-funded and federally-administered programs supported by the nation at large.

This case differs from Shapiro, in all the following respects: It deals with county monies, not federal funds; the monies are raised by local taxpayers, rather than by the nation at large; it primarily concerns limited intrastate rather than interstate travel; it involves health care rather than welfare; the possibility for residency fraud and deception in free

hospitalization is much greater than in the welfare situation encountered in Shapiro; and, finally, the instant case concerns a non-emergency medical care dissimilar to the kind of welfare payments absolutely necessary to sustain daily sustenance for the plaintiffs in Shapiro.

For the above reasons, this Court is respectfully urged to affirm the decision of the Arizona Supreme Court below.

Respectfully submitted,

WILLIAM CARTER
Counsel for Appellees

February 1973

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FILED
JUL 2 19
MICHAEL RODAK, JR.

APPENDIX

IN THE

# Supreme Court of the United States

October Term, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

ON APPEAL FROM THE SUPREME COURT OF ARIZONA

JURISDICTIONAL STATEMENT FILED
DECEMBER 8, 1972

PROBABLE JURISDICTION NOTED
March 19, 1973

IN THE

# Supreme Court of the United States

October Term, 1972

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No. 72-847

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MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

Appellees.

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**ON APPEAL FROM THE SUPREME COURT OF ARIZONA**

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## CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Aug. 5, 1971 – Plaintiffs Memorial Hospital and Henry Evaro complaint for collection of hospital bill and writ filed in Superior Court, Maricopa County, Arizona.

Aug. 30, 1971 – Defendants Board of Supervisors, et al., answer filed.

Nov. 23, 1971 – Memorandum of Decision and Order of Superior Court.

Dec. 2, 1971 – Judgment of Superior Court entered.

Jan. 14, 1972 – Petitioners Maricopa County and Henry Haws, B. W. Burns and J. Robert Stark, as members of the Maricopa County Board of Supervisors, petition for special action filed in the Supreme Court of Arizona.

Jan. 14, 1972 – Order setting time for hearing on January 25, 1972 at 10:00 A.M. in Supreme Court hearing room.

Jan. 19, 1972 – Respondents Maricopa County, Arizona, Superior Court, the Honorable Donald F. Froeb, Judge thereof, Memorial Hospital and Henry Evaro, response to petition for special action and supporting memorandum filed.

Jan. 25, 1972 – Supreme Court's order accepting jurisdiction of the petition for special action entered.

June 30, 1972 – Opinion of the Supreme Court filed.

July 13, 1972 – Respondents' motion for rehearing filed in the Arizona Supreme Court.

July 24, 1972 – Petitioners' response to petition for rehearing filed.

July 28, 1972 – Respondents' supplemental memorandum to petition for rehearing filed.

Sept. 12, 1972 – Arizona Supreme Court denies petition for rehearing.

Oct. 12, 1972 – Respondents' notice of appeal, certificate of service and designation of record on appeal filed.

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

(Title omitted in printing)

NO. C251236

COMPLAINT FOR COLLECTION OF HOSPITAL BILL AND FOR WRIT OF MANDAMUS

(Non-Classified - Civil)

Plaintiffs allege:

I

Plaintiff Memorial Hospital is a not for profit corporation organized in the State of Arizona and serving the public in Maricopa County, Arizona as a community hospital. Plaintiff Henry Evaro is a citizen of the United States and he has been a resident of Maricopa County, Arizona since the early part of June, 1971. Mr. Evaro is an indigent within the meaning of Arizona Revised Statutes § 11-297 and the applicable rules and regulations of the State Welfare Department.

II

The defendant Maricopa County is a political subdivision of the State of Arizona. The defendant Board of Supervisors is the governing body of Maricopa County which by state law is charged with the mandatory duty of providing necessary hospital and medical care to the indigent sick and injured within Maricopa County.

III

On July 8, 1971, the plaintiff Henry Evaro was suffering

from an acute attack of asthma and bronchial illness so that he was in need of hospital care. On that day Mr. Evaro was referred by his attending physician to Memorial Hospital and he was there hospitalized.

IV

Upon the admission of Mr. Evaro to Memorial Hospital it was determined that he was an indigent patient and Memorial Hospital promptly gave notice pursuant to A.R.S. § 11-297.01 to the proper agent of Maricopa County of the location and condition of the patient and of his availability for transfer to the County Hospital. Although requested to do so by Memorial Hospital, the defendant Maricopa County did not move the patient Mr. Evaro from Memorial Hospital within twelve hours after being notified or at all.

V

By reason of the refusal of the defendant County and defendant Board of Supervisors to move the plaintiff Henry Evaro from Memorial Hospital, Mr. Evaro was necessarily hospitalized at Memorial Hospital from July 8, 1971 until July 19, 1971. The reasonable cost of the hospital care and treatment received by Mr. Evaro at Memorial Hospital, as determined in accordance with A.R.S. § 11-297.01 was in the sum of $1,202.60.

VI

The plaintiffs have made timely claim upon the defendant County and defendant County Board of Supervisors through their appropriate agents for payment of the cost of hospital care and treatment in the sum of $1,202.60. Those defendants have refused and they continue to refuse to reimburse the plaintiff Memorial Hospital for these costs for the sole

reason that Henry Evaro did not meet the one year residency requirement of A.R.S. § 11-297.

VII

Because of his ill health the plaintiff Henry Evaro after his discharge from Memorial Hospital on July 19, 1971, has required, and will continue to require, hospital and medical care and treatment. Upon information and belief it is alleged that the defendant County and defendant Board of Supervisors will, unless otherwise ordered by the court, continue to refuse to provide county care upon the grounds that Mr. Evaro fails to meet the one-year residency requirement, notwithstanding that he is an indigent who is otherwise entitled to county care.

VIII

The provisions of Title 11, A.R.S. § 11-297 requiring a residency of twelve months in the county as a condition precedent for hospital and medical care is unconstitutional as violative of the privileges and immunities clause and the equal protection clause of the Fourteenth Amendment of the United States Constitution. The refusal by the defendant County and defendant Board to provide county care to the plaintiff Mr. Evaro and reimburse the plaintiff hospital for its cost of providing care is unlawful and is a breach of the duties imposed by law on them.

IX

The plaintiff Henry Evaro has no other plain, adequate and speedy remedy at law or otherwise and unless the relief requested in this action is granted by the court, further irreparable harm will be suffered by Henry Evaro.

IN ACCORDANCE WITH THE FOREGOING, the

plaintiffs respectfully ask for judgment and relief as follows:

1. That an alternative writ of mandamus be issued out of this court compelling and commanding the defendants Maricopa County and Board of Supervisors to accept the plaintiff Henry Evaro as a patient at the Maricopa County Hospital and to provide him with necessary medical care as required on an inpatient or outpatient basis or to show cause before this court, at a time and place to be set by the court, why they have not done so.

2. That upon consideration of the issues herein a preemptory writ of mandamus be issued.

3. That this court adjudge and declare that the requirement in Title 11, A.R.S. § 11-297 providing that a person must be a resident of a county for the preceding twelve months in order to receive indigent medical care is unconstitutional.

4. That the plaintiff Memorial Hospital have judgment against the defendant County and defendant Board of Supervisors in the sum of $1,202.60, together with interest thereon at the rate of six percent (6%) per annum from July 19, 1971 until paid.

5. For such other and further relief as may be just and proper.

LEWIS & ROCA

By WALTER CHEIFETZ
Walter Cheifetz
Attorneys for Plaintiffs

[Verification omitted in printing]

(Title omitted in printing)

## ANSWER

For their answer, Defendants admit, deny and allege as follows:

I

Defendants admit each and every allegation contained in Paragraphs I, II, III, IV, V, VI, VII and IX of Plaintiff's Complaint.

II

Defendants deny each and every allegation contained in Paragraph VIII of Plaintiff's Complaint.

III

Defendants affirmatively allege that A.R.S. Section 11-297 prohibits Defendants from furnishing medical care to the Plaintiff, Henry Evaro, unless he has resided within Maricopa County for a period of twelve months. Defendants further allege that A.R.S. Section 11-297 is in full force and effect and constitutes a valid exercise of legislative power of the State of Arizona.

IV

Plaintiff, Henry Evaro, has not been a resident of Maricopa County for a period of twelve months.

V

That the medical treatment furnished Plaintiff Evaro by Plaintiff Memorial Hospital and the medical treatment that Plaintiff Evaro will continue to need are not necessary for the preservation of life or limb.

WHEREFORE, Defendants having fully answered, pray the Plaintiffs' Complaint be dismissed.

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: /s/ William Carter
William Carter
Deputy County Attorney

[Verification and Certificate of Service omitted in printing]

(Title omitted in printing)

## STIPULATION

Plaintiffs MEMORIAL HOSPITAL and HENRY EVARO and Defendants MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and BOB STARK, as the Maricopa County Board of Supervisors, by their attorneys undersigned hereby stipulate as follows:

Plaintiff Henry Evaro requires continued medical care for the preservation of his health and well being, but his medical condition does not constitute an emergency case when immediate hospitalization or medical care is necessary for the preservation of life or limb as required by the terms of A.R.S. 11-297.

Plaintiff Henry Evaro has not been a resident of Maricopa County for twelve months preceding the filing of this action.

LEWIS & ROCA

By: /s/ Walter Cheifetz
Walter Cheifetz
Attorney for the Plaintiff

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: _____
Deputy County Attorney
Attorney for Defendant

* * *

## AGREED FACTS *

The material facts are as follows:

1. Henry Evaro is an indigent who recently changed his residence from New Mexico to Arizona and who has resided in the state of Arizona for less than twelve months.

2. Henry Evaro suffers from acute asthma and bronchial illness.

3. On July 8, 1971, Henry Evaro experienced severe aggravation of his chronic illness and sought relief from a neighborhood physician, Dr. Ortiz. Dr. Ortiz recommended hospitalization for his patient, although emergency treatment was not indicated.

4. At 7:30 p.m., on July 8, 1971, Henry Evaro entered Memorial Hospital in Phoenix, Arizona.

5. Even though proper notice was given to the appropriate agents of Maricopa County that Memorial Hospital wished to transfer Henry Evaro to the County Hospital, the county did not respond within the statutory twelve hour period or at all. In consequence of the hospitalization of Henry Evaro, Memorial Hospital provided hospital care and services totaling $1202.60. Although Memorial Hospital made timely claim upon Maricopa County through its appropriate agents for reimbursement of this sum, Maricopa County refused

* The facts here were set forth by appellants in the Superior Court and were agreed to and accepted by appellees in their Memorandum filed October 28, 1971.

and continues to refuse to reimburse Memorial Hospital for these costs of medical care and hospital services rendered in the treatment of Henry Evaro.

6. The sole reason for the refusal on the part of the county to admit Henry Evaro to the County Hospital, and the sole reason that the County refused and continues to refuse to reimburse Memorial Hospital for the reasonable value of its services rendered to Henry Evaro, is that he was not a resident of Maricopa County for the next preceding twelve month period as required by A.R.S. § 11-297.

* * *

## EXHIBIT A

[Exhibit A to Appellees' Memorandum of Law in the Superior Court]

## AFFIDAVIT

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

Barbara Beaty, being duly sworn, deposes and says:

1. That she is the Controller of the Maricopa County Department of Health Services and as such officer is responsible for estimating the costs to the public of the services performed by Maricopa County General Hospital.

2. That she is familiar with the operating expenses of said hospital and the amount of revenue needed to finance necessary expansion thereof.

3. That the following is her estimate of the cost to Maricopa County of providing medical services to indigent residents of Maricopa County who have not resided within the County for a period of twelve months and who do not require emergency medical care for the preservation of life or limb.

### ESTIMATED COST TO MARICOPA COUNTY IF RESIDENCY REQUIREMENT IS ABOLISHED

The data presented below are *estimates* due to the impossibility of determing [sic] the patient volume increases that will occur with the abolishment of the *residency requirement.* The cost figures are purposely conservative because of the intangibleness of the data. The format used is as follows:

1. Hospital Inpatients

2. Hospital Outpatients - Clinic

3. Nursing Home Patients

4. Summary

1. Hospital Inpatients

| | | |
|---|---|---|
| a. | Number of Patient Days for March, 1971 - August, 1971 (6 months of operation in the Roosevelt Facility) | 75,589 |
| b. | Estimate for a 12 month period | 155,000 |
| c. | Estimated number of inpatient days if residency requirement is abolished | 175,000 |
| d. | Cost per Patient Day | $75.00 |
| e. | Estimated cost increase to Maricopa County if residency requirement is abolished | $1,500,000.00 |

EXPLANATION: The current Patient Day estimate is arrived at by multiplying the figure for 6 months by 2 and taking into consideration that the census for the first few months in the new facility was lower than the lst few months because of start-up time reductions in the census. The estimate of 175,000 Patient Days, assuming the residency requirement is abolished, is based on the following:

(1) Normally, 100 percent occupancy is not attainable because a hospital must maintain some empty beds for emergencies.

(2) Patients requiring isolation create empty beds because other patients cannot be placed in the same room with isolation patients.

(3) Any time more than one bed is placed in a room, vacant beds will result because patients of different sexes cannot be placed in the same room.

(4) Surgery and nonsurgery patients cannot be mixed because of possible medical complications.

(5) Specialty units which are needed for care of certain types of patients can sometimes result in temporary non-use of beds.

These facts were brought to light in discussions with Admitting and Eligibility, Nursing and Administrative personnel at the hospital. In reviewing information with the above personnel, it was thought that a minimum occupancy figure of around 85 percent would be realistic at the present time, and this would amount to around 175,000 Patient Days per year. The cost figure of $75.00 is $5.00 less than that reported on the Medicare Report ending February 28, 1971. The reasoning behind this is that the marginal cost of an additional patient is less than the average cost (fixed or semi-variable costs being spread over more patients); thus, as a higher utilization point is reached, the average cost becomes lower.

2. Hospital Outpatients - Clinic

| | | |
|---|---|---|
| a. | Number of clinic visits for March, 1971 - August, 1971 (6 months of operation in the Roosevelt Facility) | 47,252 |
| b. | Estimate for a 12 month period | 95,000 |
| c. | Estimated number of clinic visits if residency requirement is abolished | 112,500 |
| d. | Cost per clinic visit | $20.00 |
| e. | Estimated cost increase to Maricopa County if residency requirement is abolished | $350,000.00 |

EXPLANATION: The current clinic visit estimate of 95,000 is arrived at by multiplying the figure for 6 months by 2 and is slightly under 95,000. A minimum estimate of 112,500 clinic visits if the residency requirement is abolished, is based upon the following:

(1) Limited supply of physicians available to treat patients.

(2) Number of patients that can properly be seen in a given time period. (Given 30 exam rooms, it is

felt that one physician can see 5 patients in 1 hour using 2 exam rooms for 6 hours per day for 250 days per year (holidays and weekends are excluded.) If physicians' services could be obtained and the clinic hours increased, more patients could be seen but at a higher cost than $20.00 per visit because of differentials needed to hire personnel to work later shifts.) The figure of $20.00 per clinic visit is the cost per visit as reported on the Medicare year-end statement of reimbursable costs for the period ending February 28, 1971.

The figures given on the minimum estimated workload were determined via computations from the figures shown above which were gathered in discussion with personnel from the clinic, Administration, Admitting and Eligibility.

3. Nursing Home Patients

| | | |
|---|---|---|
| a. | Estimated increase in Patient-Day load if residency requirement is abolished for a 12 month period | 76,500 |
| b. | 90 percent of the Patient Days will be skilled care Patient Days | 68,850 |
| c. | The gross cost per Patient Day for skilled patients is currently | $12.60 |
| d. | Total gross cost for skilled nursing home patients is estimated at | $867,500 |
| e. | 10 percent of the Patient Days will be sheltered care Patient Days | 7,650 |
| f. | The gross cost per Patient Day for sheltered patients is estimated to be | $9.00 |
| g. | Total gross cost for sheltered nursing home patients is estimated at about | $69,000 |

h. Maricopa County General Hospital supplies medical supplies and services as well as drugs to outpatients in nursing homes, and it is estimated that it runs $2.50 per Patient Day.

i. Cost of drugs and medical supplies and services $191,000

j. State welfare and Social Security money will continue to pay 50 percent of the room and board charges on skilled and sheltered care.

k. Estimated cost increase to Maricopa County if residency requirement is abolished:

| | |
|---|---|
| Skilled Care | $867,500 |
| Sheltered Care | 69,000 |
| Subtotal | 936,500 |
| Social Security and State Welfare vendor pay | 468,250 |
| subtotal | 468,250 |
| Plus Medical Supplies and services and drugs | 191,000 |
| TOTAL | $659,250 |

EXPLANATION: The Patient-Day estimate was arrived at through discussions with our personnel in charge of nursing home placement, eligibility and other hospital administrative personnel, representatives of State Health Department, Maricopa County Vital Statistics, Health Planning Council, Arizona Health Planning Authority and Arizona Economic Planning and Development. It is determined as follows:

(1) Each month for the first three months 50 patients will go to nursing homes

(2) Each month for the next nine months, 20 patients will go to nursing homes. This increase is anticipated with the abolishment of the residency requirement. The cost figures of $12.60 and $9.00 per Patient Day is what we are currently paying and expect to pay for skilled and sheltered care respectively, based upon an analysis of nursing home costs. The $2.50 cost per day for medical supplies and services and drugs

on figures used by Federal hospitals
is based upon place their patients in nursing homes.
when they plac State Welfare and the individual pa-
Currently, State l Security are paying about 50 per-
tients' Social S gross costs for our nursing home pa-
cent of the gro re assuming that this will remain con-
tients; we are as increased load decreases the Welfare
stant. If the inc vendor pay) per patient, then the fi-
payments (venc act will be even greater than antici-
nancial impact
pated.

4. Summary

It must be emphasized ized that these figures are minimum
estimates and are based u d upon current facts available to us
and intelligent estimates tes from the hospital personnel and
outside authorities that aat are most closely associated with
the areas mentioned. It is t is impossible to accurately estimate
the impact that abolishme hment of the residency requirement
will have financially upor pon Maricopa County. Below is the
computation showing wh what we estimate the cost to be up-
on removal of the reside sidency requirement for the first 12
months.

| | |
|---|---|
| Hospital Inpatients | $1,500,000.00 |
| Hospital Outpatients - Cs - Clinic | 350,000.00 |
| Nursing Home Patients nts | 659,250.00 |
| TOTAL | $2,509,250.00 |

Further affiant says not. ot.

/s/ Barbara Beaty
Barbara Beaty

[Jurat omitted in printing] ng]

## EXHIBIT B

[Exhibit B to Appellees' Memorandum of Law in the Superior Court]

## AFFIDAVIT

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

Stanford F. Farnsworth, M. D., being duly sworn, deposes and says:

1. That he is the Maricopa County Director of the Department of Health Services and as such officer is administratively responsible to the Maricopa County Board of Supervisors for the maintenance and operation of Maricopa County General Hospital.

2. That Maricopa County General Hospital is an institution owned by Maricopa County and operated by the Maricopa County Board of Supervisors for the purpose of discharging the Supervisors' statutory obligation to provide for the indigent sick of the County.

3. That he has caused to be prepared an estimate of the cost to Maricopa County of furnishing medical treatment to indigent residents of Maricopa County who have not resided within the County for a period of twelve months and who do not require emergency medical care for the preservation of life or limb.

4. That the estimated cost of furnishing medical care to the persons described in Paragraph 3 above is $2,500,000 per year.

5. That the total operating budget of Maricopa County General Hospital for the FY 1971-72 is $18,805,446.

6. That it is his belief, if Defendants are obligated to provide medical care to the persons described in Paragraph 3 of this Affidavit, it will be necessary for them to increase the sums spent to maintain and operate the Maricopa County General Hospital by approximately 13.3%.

Further affiant says not.

/s/ Stanford F. Farnsworth
Stanford F. Farnsworth, M.D.

[Jurat omitted in printing]

## EXHIBIT C

[Exhibit C to Appellees' Memorandum of Law in the Superior Court]

### AFFIDAVIT

STATE OF ARIZONA )
) ss.
COUNTY OF MARICOPA )

Charles W. Miller, being duly sworn, deposes and says:

1. That he is the County Manager for the Defendant, Maricopa County, and as such officer is responsible to the Maricopa County Board of Supervisors for the preparation of the annual budget of said County and the computation of the rate of taxation necessary to raise the sums necessary to meet said budget.

2. That he is informed and believes that the cost to Maricopa County of providing medical care to indigent residents of the County who have not resided within the County for a period of twelve months and do not require emergency medical care for the preservation of life or limb, would be approximately $2,500,000.

3. That Maricopa County can raise the sum stated in Paragraph 2 above only by ad valorem taxation of real and personal property in said County.

4. That at the present assessed valuation of property in Maricopa County, to raise the sum stated in Paragraph 2 above, would require an ad valorem property tax rate of $.18 per hundred dollars of assessed valuation.

5. That the present general tax rate of Defendant, Maricopa County, is $2.13 per hundred dollars of assessed valuation. In order to raise the sums required to

furnish medical care to the persons described in Paragraph 2 of this Affidavit, it will be necessary for the County to raise the general County tax rate to $2.31 per hundred dollars of assessed valuation, an increase of 8.45%.

6. That the total budget for Maricopa County for the fiscal year beginning July 1, 1971, is $76,460,364. An increase of $2,500,000 would require said County to increase its budgeted expenditures by approximately 3.27% per annum.

Further affiant says not.

/s/ Charles W. Miller
Charles W. Miller

[Jurat omitted in printing]

(Title omitted in printing)

MEMORANDUM OF DECISION
AND ORDER

This cause was presented to the court upon agreed facts and memorandum of law.

The sole question in the case is whether Section 11-297, Arizona Revised Statutes, is unconstitutional insofar as it requires in non-emergency cases that an indigent person be a resident of the county for the preceding twelve months before he can receive hospitalization or medical care at county expense.

The issue in this case is determined by the holding of the United States Supreme Court in *Shapiro v. Thompson*, 394 U.S. 618 (1969). The application of that case to the one-year residency requirement of the statute in question discloses that this statutory provision is violative of the Equal Protection clause of the Fourteenth Amendment of the United States Constitution. See also, *Vaughn v. Bower*, 400 U.S. 884, aff'g memo. 313 F. Supp. 37 (D.C. Ariz. 1970) and *Valenciano v. Bateman*, 323 F.Supp 600 (D.C. Ariz. 1971). cf. *Board of Supervisors, Pima County v. Robinson*, 10 Ariz. App. 238, 457 P.2d 951, *vacated as moot*, 105 Ariz. 280, 463 P.2d 563.

The one-year residency requirement is severable from the general statutory provisions for medical care to the indigent sick.

Therefore, in accordance with the foregoing,

IT IS ORDERED declaring that the words "for the preceding twelve months" in Section 11-297, A.R.S., render the statute unconstitutional and are therefore void.

IT IS FURTHER ORDERED that plaintiffs recover against defendants the sum of ONE THOUSAND TWO HUNDRED AND TWO AND 60/100 DOLLARS ($1,202.60), together with costs.

IT IS FURTHER ORDERED that the defendants accept plaintiff as a patient at the Maricopa County Hospital and to provide him with necessary medical care.

DATED this 23rd day of November, 1971.

/s/ DONALD F. FROEB
JUDGE

[Certificate of service
omitted in printing]

THE SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

| | |
|---|---|
| MEMORIAL HOSPITAL and HENRY EVARO, Plaintiffs, vs. BOARD OF SUPERVISORS, MARICOPA COUNTY, ARIZONA; and MARICOPA COUNTY, ARIZONA; Defendants. | NO. C 251236<br>JUDGMENT<br>(Assigned to the Honorable Donald F. Froeb - Div. 16) |

(FILED: December 2, 1971)

IT IS ORDERED, ADJUDGED AND DECREED as follows:

1. That the words "for the preceding twelve months" contained in A.R.S. § 11-297 constitute an unconstitutional requirement and are therefore void.

2. That the one-year residency requirement contained in A.R.S. § 11-297 is severable from the general statutory provisions for medical care to the indigent.

3. That the defendants accept the plaintiff Henry Evaro as a patient at the Maricopa County Hospital and provide him with necessary medical care and that a peremptory writ of mandamus to this effect may be issued by the clerk of the court.

4. That the plaintiff Memorial Hospital is hereby awarded judgment against the defendants in the sum of One Thousand Two Hundred and Two and 60/100 Dollars ($1,202.60), together with costs.

DONE IN OPEN COURT this 1st day of ~~November~~ December, 1971.

/s/ Donald F. Froeb
Judge of the Superior Court

APPROVED AS TO FORM:
MOISE BERGER
MARICOPA COUNTY ATTORNEY

By /s/ John R. Sticht
Deputy County Attorney
ATTORNEYS FOR DEFENDANTS

LEWIS & ROCA

By /s/ Walter Cheifetz
Walter Cheifetz
ATTORNEYS FOR PLAINTIFFS

IN THE SUPREME COURT
OF THE STATE OF ARIZONA

| | | |
|---|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, | ) | |
| Petitioners, | ) | No. 10750 |
| vs. | ) | PETITION FOR SPECIAL ACTION |
| SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents. | ) | |

(FILED: January 14, 1972)

Petitioners, MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, for their Petition for Special Action, allege as follows:

I

The real parties in interest are MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, Respondents, and MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners.

II

Respondents, MEMORIAL HOSPITAL and HENRY EVARO, sued the Petitioners in the Superior Court of the

State of Arizona in Cause #C-251236 to compel the Petitioners to accept the Respondent, HENRY EVARO, as a patient at Maricopa County General Hospital, a hospital owned and operated by Petitioners for the relief of the indigent sick of the County and to compel the Petitioners to pay to the Respondent, MEMORIAL HOSPITAL, the sum of $1,202.60 for hospital care furnished Respondent, HENRY EVARO. The Parties agreed that HENRY EVARO was an indigent person who required continued medical care for the preservation of his health and well-being but his medical condition did not constitute an emergency case needing immediate hospital or medical care as required by the terms of A.R.S. 11-297. The Parties further stipulated that Respondent, HENRY EVARO, had not been a resident of Maricopa County for twelve months preceding the filing of the action in the Superior Court.

The Parties agreed in the pleadings and memorandum filed in the Superior Court that the sole question in the case was whether A.R.S. 11-297, prescribing a twelve months durational residence requirement for non-emergency medical services at county expense, violated the U. S. Constitution.

The HONORABLE DONALD F. FROEB, Judge of the Superior Court, ruled that words "for the preceding twelve months" contained in A.R.S. 11-297 violated the U. S. Constitution and were, therefore, void. Attached hereto as Exhibits A & B, respectively, are true and correct copies of the Memorandum of Decision and Judgment of the Superior Court.

III

The Respondent, SUPERIOR COURT OF THE STATE OF ARIZONA, has proceeded in excess of its jurisdiction and

legal authority in that it declared to be void a valid and subsisting statute of the State of Arizona. A.R.S. 11-297, prescribing a twelve months durational residence requirement for medical treatment at public expense is a valid exercise of the State's legislative power and does not conflict with the Constitution of the United States.

IV

Petitioner does not have a plan [sic], speedy and adequate remedy at law because Petitioner will be unable to recover from the Respondent's expenses of medical care furnished to Respondent, HENRY EVARO, in the future pursuant to judgment of the Court because Petitioner is informed and believes that Respondent, HENRY EVARO, is an indigent person without sufficient means to repay to Petitioners the cost of his medical care if this Court should determine that the decision of the Superior Court was erroneous.

The Supreme Court has discretionary power to issue a writ of certiorari in a case where a Petitioner has the right of appeal when, in the judgment of the Supreme Court, the right of appeal is neither speedy nor adequate.

V

Petitioners respectfully submit that this is a suitable case for the Supreme Court to exercise its discretion and accept the case for review on a special action because of the extreme public importance of the issue presented in the case. The Respondent, HENRY EVARO, is one of a large class of citizens whose rights to receive medical care at public expense have not been adjudicated by a court of last resort. The Petitioners and the Supervisors of the other thirteen counties in the State of Arizona need the guidance of the Court on this question of

law in preparing budgets for the coming fiscal year and discharging their legal responsibility to provide for the indigent sick of the county.

WHEREFORE, Petitioners respectfully request:

1. That the Court issue an immediate order staying all procedures in the Court below until this Court can hear the matter.
2. That the Court set a time and day on which Petitioners' application for special action can be heard.
3. That the Court after hearing enter an order vacating the judgment of the Superior Court.
4. That the Court declare A.R.S. 11-297, prescribing a twelve months durational residence requirement for a person seeking medical care at public expense, to be a valid exercise of the legislative power of the State of Arizona.

Respectfully submitted this 12 day of January, 19__

MOISE BERGER
MARICOPA COUNTY ATTORNEY

By: /s/ William Carter

William Carter
Deputy County Attorney
Attorneys for Petitioners
111 South Third Avenue
Phoenix, Arizona 85003

[Verification and Memorandum of Points and Authorities omitted in printing]

[Title omitted in printing]

## RESPONSE TO PETITION FOR SPECIAL ACTION AND SUPPORTING MEMORANDUM

### RESPONSE

For their response to the petition for special action, the respondents admit, deny and allege as follows:

I

They admit that this is a suitable case for the Supreme Court to exercise its discretion and accept the case for review on a special action for the reasons stated in the petition.

II

They admit the allegations of the petition except for the allegations contained in paragraph III. In this regard they deny that the respondent Superior Court of the State of Arizona has proceeded in excess of its jurisdiction or legal authority in declaring the residence requirement to be invalid.

III

They allege that that portion of A.R.S. § 11-297 which prescribes a 12 month durational residence requirement for medical treatment at public expense is contrary to the Consitution of the United States.

In accordance with the foregoing and the memorandum of points and authorities hereinafter set forth, the respondents respectfully ask that the judgment of the Superior Court be affirmed.

LEWIS & ROCA

By_____

Walter Cheifetz
Attorneys for Respondents

[Memorandum of Points and
Authorities omitted in printing]

SUP
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SUPREME COURT
TATE OF ARIZONA
Jan Phoenix
Supreme 85007
Maricopa C January 26, 1972
[Title omitted in printing preme Court No. 10750
The following action opa County No. C-251236
the State of Arizona on nting]
above-entitled cause:

tion was taken by the Supreme Court of
"ORDERED: The Co a on January 25, 1972 in regard to the
Petitior

e Court accepts jurisdiction of the
tition for Special Action."

[Statement of mailing omitted in printing]

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

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IN THE SUPREME COURT OF THE STATE OF ARIZONA

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|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors,<br><br>Petitioners,<br><br>v.<br><br>SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST,<br><br>Respondents. | ORDER GRANTING SPECIAL ACTION PRAYER FOR RELIEF AND VACATING SUPERIOR COURT JUDGMENT |

Special Action re: Maricopa County Superior Court Number C-251236

Moise E. Berger, Maricopa County Attorney
by William Carter, Deputy County Attorney
Attorneys for Petitioners

Lewis & Roca
by Walter Cheifetz Attorneys for Respondents

This cause having been heretofore submitted, and the Court having duly considered same, and being now advised in the premises, files its opinion. It is accordingly ORDERED that the Special Action Prayer for Relief is granted and the judgment of the Superior Court is vacated.

DONE IN OPEN COURT this 30th day of June, 1972.

[Certification omitted in printing]

IN THE
SUPREME COURT OF THE
STATE OF ARIZONA
In Banc

| | |
|---|---|
| MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, as members of the Maricopa County Board of Supervisors, Petitioners, v. SUPERIOR COURT OF THE STATE OF ARIZONA, in and for the County of Maricopa, the HONORABLE DONALD F. FROEB, Judge thereof, and MEMORIAL HOSPITAL, an Arizona corporation, and HENRY EVARO, REAL PARTIES IN INTEREST, Respondents. | No. 10750<br>FILED:<br>June 30, 1972 |

SPECIAL ACTION
PRAYER FOR RELIEF GRANTED
JUDGMENT VACATED

Moise Berger, Maricopa County Attorney — Phoenix
by William Carter, Deputy County Attorney
Attorneys for Petitioners

Lewis & Roca — Phoenix
by Walter Cheifetz
Attorneys for Respondents

HOLOHAN, Justice:

Petitioner, the Board of Supervisors of Maricopa County,

filed this petition for special action to seek a review of the order and judgment of the Superior Court compelling the Petitioner to accept the Respondent Evaro as a patient at the Maricopa County General Hospital. The Respondent Superior Court ruled that the residency requirement in A.R.S. § 11-297 was unconstitutional, and that all persons in the county who were indigent would be entitled to medical care at the county hospital irrespective of the length of residence within the county. Because of the importance of the issues involved and the need for a prompt resolution of the problem, the Petition was accepted for determination by this Court.

The parties have stipulated the essential facts. They have agreed that the Respondent Evaro was an indigent person who required continued medical care for the preservation of his health and well being, but his medical condition did not constitute an emergency case needing immediate hospital or medical care. The Respondent Evaro had not been a resident of Maricopa County for 12 months preceding the requirement for medical care or at the time of the filing of the action in the Superior Court. He was treated at Memorial Hospital, and the hospital joined with Evaro in the action in the Superior Court to compel the Board of Supervisors to accept the Respondent as a patient at the County General Hospital, and to pay the Respondent Memorial Hospital the sum of $1,202.60 for hospital care furnished Evaro up to the time of the filing in the Superior Court.

Substantially, the same facts as here presented were submitted to the Superior Court, and that court ruled in favor of the position of the Respondents holding that the residency requirement found in A.R.S. § 11-297 was unconstitutional and void and, therefore, the Petitioners were ordered to accept Evaro as a patient at the County General Hospital where his medical care was to be provided, and judgment was given against the Board of Supervisors and in favor of Memorial Hospital.

The sole question presented in this cause is whether the residency requirement of the Statute violates the Federal Constitution.

A.R.S. § 11-297 provides:

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief * * * without first filing * * * a statement * * * that he is an indigent * * * and that he has been a resident of the county for the preceding twelve months."

The principal case relied upon by Respondents is that of Shapiro v. Thompson, 394 U.S. 618, 89 S.Ct. 1322, 22 L.Ed. 2d 600 (1969). The Supreme Court of the United States declared a one year residency requirement of a state for eligibility for welfare to be unconstitutional. The U. S. Supreme Court held that such a residency requirement constituted an "invidious" classification which interfered with a fundamental right, the right to travel, and, in the absence of a compelling and substantial state interest, such residency requirement cannot stand.

While the *Shapiro* case dealt with eligibility for welfare funds which were described as necessary to life and well being, various federal courts have extended the ruling to apply to a host of situations. This has largely resulted because of the limitation placed by the Court on the *Shapiro* holding. See Footnote 21 on page 638 of 394 U.S., on page 1333 of 89 S.Ct. It would seem that the matter is left for a case by case determination. A decision by the California Court of Appeals sustaining that state's residency requirement for tuition free education, Kirk v. Board of Regents, 273 Cal.App.2d 430, 78 Cal.Rptr. 260 (1969), was left standing when the U. S. Supreme Court, without opinion, dismissed the appeal, 396 U.S. 554, 90 S.Ct. 754, 24 L.Ed.2d 747 (1970). A similar decision by a three-judge panel upholding the Minnesota residency requirement was affirmed by the U.S. Supreme Court without opinion. Starns v. Malkerson, 326 F.Supp. 234 (D. Minn., 1970), *aff'd* 401 U.S. 985, 91 S.Ct. 1231, 28 L.Ed.2d 527 (1971). Following these authorities and others, we recently sustained the residency requirement of this state classifying students at the State Universities, and approved as constitutional the requirement that students with less than the required residency pay a greater tuition than the resident students. Arizona Board of Regents v. Harper, 108 Ariz. 223, 495 P.2d 453 (1972).

Recently, the U.S. Supreme Court in Dunn v. Blumstein, 405 U.S. 330, 92 S.Ct. 995, 31 L.Ed.2d 274 (1972), struck down the Tennessee one year residency for eligibility to vote as not furthering any compelling state interest and as being in violation of the equal protection clause of the Fourteenth Amendment. The Court found that the residence requirement in voting deprived citizens of two fundamental rights, the right to vote and the right to travel. In *Dunn*, as in *Shapiro*, the Court concludes that any classification which serves to penalize the exercise of a fundamental right, unless shown to be necessary to promote a compelling governmental interest is unconstitutional.

Following the *Shapiro* decision, the precise issue presented in this cause was decided by the Arizona Court of Appeals in Board of Supervisors v. Robinson, 10 Ariz.App. 238, 457 P.2d 951 (1969), vacated by us as moot, 105 Ariz. 280, 463 P.2d 536 (1970), and in a three-judge federal case Valenciano v. Bateman, 323 F.Supp. 600 (D.Ariz. 1971). In each instance the court held the classification was unconstitutional.

The county residency requirement for non-emergency medical treatment does not discriminate in favor of residents of Arizona versus recent arrivals. The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied. The district court in *Valenciano* was not impressed with this position, and their position was that there was no distinction between interstate and intrastate travel.

Whether the district court's rationale in *Valenciano* is sound or not is not terribly important. The main point is that the Legislature was not intent on interfering with interstate travel as was the fact in the *Shapiro* case. Nor does the matter in issue deal with such fundamental rights as speech or voting. Contrary to the Court of Appeals and the district court, we believe that this classification more properly falls within the permissible area of reasonable regulation as approved in Dandridge v. Williams, 397 U.S. 471, 90 S.Ct. 1153, 25 L.Ed.2d 491 (1970). The U.S. Supreme Court held the Maryland maximum welfare grant regulation constitutional

although the grant placed an absolute limit on the amount to be paid a dependent family regardless of size and actual need. The Maryland statute and regulations, as in a number of states, fix a standard of need for an eligible family, and the standard of need is increased with each additional person or child in the household subject to a maximum limit of $250 per month irrespective of the number of children in the family needing the assistance. The classification was upheld on the "reasonable basis" test. As the Court said in *Dandridge*:

> "In the area of economics and social welfare, a State does not violate the Equal Protection Clause merely because the classifications made by its laws are imperfect. If the classification has some 'reasonable basis,' it does not offend the Constitution simply because the classification 'is not made with mathematical nicety or because in practice it results in some inequality.' Lindsley v. Natural Carbonic Gas Co., 220 U.S. 61, 78, 31 S.Ct. 337, 340, 55 L.Ed. 369, 377. 'The problems of government are practical ones and may justify, if they do not require, rough accommodations—illogical, it may be, and unscientific.' Metropolis Theatre Co. v. City of Chicago, 228 U.S. 61, 69-70, 33 S.Ct. 441, 443, 57 L.Ed. 730, 734. 'A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it.' McGowan v. Maryland, 366 U.S. 420, 426, 81 S.Ct. 1101, 6 L.Ed.2d 393, 399." 397 U.S. at p. 485, 90 S.Ct. at 1161.

The Legislature has placed the sole and exclusive responsibility for hospitalization and medical care of the indigent sick on county government. A.R.S. § 11-291. No particular standard is set to guide the counties other than that they may include in their budgets and tax levy such amount as is deemed necessary and adequate for the purpose. A.R.S. § 11-292.

The wide differences in county resources among the counties result in different economic ability to meet the needs of the residents within the county who need medical care. Some reasonable basis of determining the demands to be made on such county facilities or resources must exist if the county is to be able to budget and tax to carry out its responsibilities. The Legislature has chosen to use a county residency base.

Our duty is not to decide whether that position is wise or whether it best fulfills the social need. Our duty is to determine whether it has rational basis "free from invidious discrimination." We believe that the statute is constitutional.

Petitioner argues also that there is a compelling interest of county government, especially Petitioner county, in the classification. Absent a residence requirement, any indigent sick person in the state could seek admission to Petitioner's hospital, the facilities being the newest and most modern in the state, and the resultant volume would cause long waiting periods or severe hardship on Petitioner county if it tried to tax its property owners to support the indigent sick of the state. The point, while perhaps overextended, raises a serious practical problem vital to the interests of the residents of Petitioner county. Should the development of modern and effective facilities be discouraged because such efforts attract an inordinately large group of users? How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate.

The Legislature may wish to change the present system of indigent medical care from county responsibility to state responsibility with the larger tax base, but it is not our function to decide the best means of accomplishing the solution to a particular social problem. This responsibility constitutionally rests with the Legislature.

We find the residency requirements of A.R.S. § 11-297 to be constitutional and a valid exercise of legislative power and, therefore, the judgment of the Superior Court in Cause No. C251236 is vacated.

Judgment vacated.

SUPREME COURT
STATE OF ARIZONA
Phoenix
85007
September 13, 1972
Supreme Court No. 10750
Maricopa County No. C 251236

[Title omitted in printing]

The following action was taken by the Supreme Court of the State of Arizona on September 12, 1972 in regard to the above-entitled cause:

"ORDERED: Petition for Rehearing = DENIED."

Certified copy of Order Granting Special Action Prayer for Relief and Vacating Superior Court Judgment issued this date.

CLIFFORD H. WARD, Clerk
By /s/ Mary Ann Hopkins
Deputy Clerk

[Statement of mailing omitted]

This Single Appendix is respectfully submitted by

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Walter Cheifetz
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Attorneys for Appellants

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FILED
JUL 2 1973
MICHAEL RODAK, JR., CLERK

IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-847

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MEMORIAL HOSPITAL, HENRY EVARO, ET AL., *Appellants,*

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors, *Appellees.*

---

**On Appeal from the Supreme Court of Arizona**

---

## BRIEF FOR MEMORIAL HOSPITAL AND HENRY EVARO

---

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

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No. 72-847

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MEMORIAL HOSPITAL, HENRY EVARO, ET AL., *Appellants,*

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors, *Appellees.*

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**On Appeal from the Supreme Court of Arizona**

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## BRIEF FOR MEMORIAL HOSPITAL AND HENRY EVARO

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### OPINION BELOW

The opinion of the Supreme Court of Arizona is reported at 108 Ariz. 373, 498 P.2d 461 (1972).

### JURISDICTION

This action was brought in the Superior Court, Maricopa County, Arizona, by appellants Memorial Hospital and Henry Evaro against the County. Memorial is a nonprofit hospital, and Evaro is a resident of Maricopa County who had resided there for less than one year. The sole question was whether the

County was obligated to provide free medical care in the light of an Arizona statute, A.R.S. § 11-297 A, which conditioned such care upon one year's residence. The trial court held the statute invalid (A. 24). The Supreme Court of Arizona vacated this judgment with an opinion dated June 30, 1972 (A. 33-38), and denied rehearing on September 12, 1972 (A. 39). A Notice of Appeal was filed on October 12, 1972. This Court noted probable jurisdiction on March 19, 1973, and has jurisdiction under 28 U.S.C. § 1257(2).

## STATUTE INVOLVED

A.R.S. § 11-297 A is as follows:

> "A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

## QUESTION PRESENTED

Does a statute of the State of Arizona requiring a one-year residence in a given county for welfare medical care conflict with the due process, equal protection, and privileges and immunities clauses of the Four-

teenth Amendment of the Constitution of the United States, with particular reference to the "right to travel"?

## STATEMENT OF THE CASE

Henry Evaro is an indigent suffering from a chronic asthmatic and bronchial illness. He became a resident of Maricopa County in early June, 1971, having moved from New Mexico. On July 8, 1971, Mr. Evaro experienced an acute and severe attack of his chronic illness. His attending physician recommended hospitalization, and he was referred to the plaintiff Memorial Hospital (Memorial), a nonprofit institution in Maricopa County, Arizona (A. 10).

Pursuant to procedures followed under the Arizona statute, Memorial, finding itself with an indigent patient who might qualify for County care, properly notified the County requesting that the County hospital accept the patient. Under the applicable procedures, if the County was able to accept the patient, it was to notify Memorial within twelve hours. The County hospital did not respond within the twelve-hour period.

Memorial provided care and services for Mr. Evaro, at a cost of $1,202.60. The hospital, in accordance with the approved reimbursement procedures, then claimed reimbursement from the County for this sum. The County refused such reimbursement solely because the patient had not been a resident of the County for a year as required under the statute for nonemergency indigent medical care.* (A. 10-11).

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* The statute permits care without regard to residence in "emergency" situations. Counsel for the parties in this action has stipulated that this patient was not "an emergency" and that the exception is, therefore, not applicable (A. 9).

The durational residence requirements of the statute were added by the Arizona Legislature in 1937, and a Memorial adopted by the Arizona House of Representatives at that same session reveals that this state was highly concerned about the influx of poor, chronically ill persons from midwestern states seeking Arizona's dry climate. (The Memorial is reprinted as Appendix A to this Brief). The durational residence requirements of the statute were challenged in a three-judge district court action involving a case arising in Pinal County, Arizona in *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), and that court held this same statute unconstitutional.

This action was instituted to determine whether Maricopa County was obligated to provide care for this indigent and to reimburse Memorial for the costs that it sustained as a result of the County's refusal to accept responsibility for the indigent's care. Necessarily, this required an adjudication of the validity of the Arizona statute which exempts the County from any such obligation for persons like Mr. Evaro who have been residents for less than a year.

The trial court held the statute unconstitutional, believing itself compelled to this result by the decision of this Court in *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969). The court also cited *Valenciano, supra,* and *Vaughan* v. *Bower,* 313 F. Supp. 37, *aff'd mem.,* 400 U.S. 884 (1970), a case invalidating the residence requirements of another Arizona statute for mental health care. (A. 22).

The Supreme Court of Arizona overruled the trial court, declining to follow the *Valenciano* decision. This appeal followed. (A. 33).

## SUMMARY OF ARGUMENT

The question is the validity of the Arizona one-year county residence requirement for indigent health care. *Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), precludes the use of durational residence requirements for other forms of welfare, and we think that it applies with equal or greater force to health care. This Court, by affirming without opinion the earlier decision of a three-judge court in *Vaughan* v. *Bower,* 313 F. Supp. 37 (D. Ariz. 1970), *aff'd without opinion,* 400 U.S. 884 (1970), has very nearly so held, and every federal court which has considered the application of *Shapiro* principles to indigent health care has come to the same result; *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), invalidating the identical statute here under discussion, is a sample of the several decisions on point.

*Shapiro* holds that durational residence requirements may not be applied to the public distribution of the necessities of life. This is the result of what is by now 40 years of public consideration of the question. Congress expressly disapproved durational residence requirements for health care even before it disapproved all other kinds of durational residence requirements, and well before the *Shapiro* decision; the fact that a co-equal branch of government has clearly established that this kind of discrimination is "inherently invidious" bears strongly on the question now before the Court, *Frontiero* v. *Richardson,* 93 S. Ct. 1764, 1771 (1973). The impropriety of such classification is now so well recognized throughout the United States that, at the present time, only five states attempt to apply any durational residence requirements to health care. The decision now under review is the only

adjudication in the United States which has upheld such a requirement.

The Arizona statute requiring a year's residency in a county, as well as in the state, is even stricter than the year durational residency requirements struck down in *Shapiro*. The equal protection and right to travel principles apply as well to intercounty as to interstate movement, *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972). While no federal funds are involved, this is immaterial, *Pease* v. *Hansen,* 157 Mont. 99, 483 P.2d 720 (1971), *rev'd,* 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971).

The restriction is a penalty on the right to travel and this is all that is required to invalidate the act. *Dunn* v. *Blumstein, supra; Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd without opinion,* 405 U.S. 1034 (1972). The legislative history of the act in question shows, as do the papers already filed in this Court and the decision below, that the purpose of this statute is to keep people out of certain Arizona counties. This means necessarily that if those persons are already residents of the state, they are meant to be kept in certain other counties. By virtue of the *Shapiro* decision, such legislation can be justified only where there is a "compelling state interest." Health care is a "fundamental necessity of life," another element mentioned in *Shapiro*. While Arizona would not apply the rigor of its statute in an "emergency," this will not save the statute. Whatever an "emergency" case may be, the statute is invalid as to the remainder of the cases, and this was the conclusion in *Vaughan* v. *Bower,* 313 F. Supp. 37, 42 (D. Ariz. 1970), *aff'd without opinion,* 400 U.S. 884 (1970), a case involving practice under the mental health statute in Arizona.

We recognize the distinction between the "compelling state interest" cases such as *Shapiro* and the "rational basis" cases such as *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970). The difference is that in the instant case, a residence classification impinges directly upon a constitutional right, the right to travel, and in such cases, the compelling state interest test applies. The financial benefit to taxpayers at the expense of new residents will not justify the act; the fact that one can save money by discriminating against new residents is simply not a good enough reason. *See Rivera* v. *Dunn,* 329 F. Supp. 554 (D. Conn. 1971), *aff'd without opinion,* 404 U.S. 1054 (1972), and *see Goldberg* v. *Kelly,* 397 U.S. 254, 266, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). The claimed administrative advantage is no better than that rejected in the *Shapiro* case.

Alternatively, even under conventional equal protection standards, the act is invalid. As is well established in the decisions, a residence discrimination in the administration of the necessities of life suggests no legitimate governmental purpose or interest which would meet any test, no matter how lax, under the equal protection clause. No legitimate interest exists by which Arizona can preclude a sick person in another state, or indeed in one of the eight Arizona counties with no public hospital at all, from moving for the sake of his health to a metropolis which has a public hospital. Any distinction in terms of "old" and "new" residents does indeed give rise to "grave problems under the Equal Protection Clause," *Vlandis* v. *Kline,* 49 *U.S.L.W.* 4796, 4798 n. 6 (1973). "Inhibiting migration by needy persons" is not a legitimate purpose, and this is precisely what *Shapiro* declares. 394 U.S. at 629.

## ARGUMENT

*"Ye shall have one manner of law, as well for the stranger, as for one of your own country: for I am the Lord your God."* Leviticus 24:22.

### I. SHAPIRO v. THOMPSON REQUIRES THE REVERSAL OF THE JUDGMENT BELOW; HEREIN OF THE DECISION AND ITS REGULATION TO MEDICAL CARE.

#### A. The Shapiro Decision.

*Shapiro* v. *Thompson,* 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969), is one of the profoundly seminal decisions of this Court. "In *Shapiro* v. *Thompson,* the Supreme Court applied the right to travel with broader scope than ever before .... Under the *Shapiro* rationale, the right to travel must be seen as insuring new residents the right to vital government benefits and privileges in the states to which they migrate."[1]

In the brief period since this decision, it has come to have almost talismanic value; with the decision of this Court behind him, an American citizen can plan to take up new residence in any part of the land, with so much protection as this institution can give from the hazards of travel and transfer.

These basic propositions emerge from *Shapiro:*

1. A state may not prohibit welfare benefits to residents of less than a year; such a discrimination against new residents is invidious and denies equal protection of the law.[2]

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[1] Comment, *Shapiro* v. *Thompson: Travel, Welfare and the Constitution,* 44 *N.Y.U. L. Rev.* 989, 1013 (1969).

[2] The Arizona statute under attack discriminates against new residents, *i.e.,* those resident within the County for less than a year. The question of the rights of transients to medical care is,

2. A one-year waiting period device is well suited to discourage the influx of poor families in need of assistance; "but the purpose of inhibiting migration by needy persons into the State is constitutionally impermissible." 394 U.S. at 629

3. "[A] mere showing of a rational relationship between the waiting period" and legitimate state objectives is not enough to justify such a classification; a compelling governmental interest must be shown. 394 U.S. at 634.

4. The state may not condition on residence a denial of public benefits "upon which may depend the ability of the families to obtain the very means to subsist—food, shelter, and other necessities of life." 394 U.S. at 627.

From this nucleus, much has grown. The same principles have been applied to health care restrictions, *Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971); and hospitalization for mental health care, *Vaughan* v. *Bower,* 313 F. Supp. 37, *aff'd mem.* 400 U.S. 884 (1970); and public housing, *King* v. *New Rochelle Municipal Housing Authority,* 442 F.2d 646, *cert. denied* 404 U.S. 863 (2d Cir. 1971), and *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970). Efforts to whittle away its application to welfare have been rejected, *Besaw* v. *Affleck,* 333 F.

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therefore, not necessarily within the scope of this case. It has been supposed that this Court means to make some important distinction between residents and transients in terms of the availability of public services; *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807, 811 (1st Cir. 1970). While the hospitals of Arizona, if pushed to a position, would think it equally uncivilized to let either a passerby or a legal resident suffer the misfortunes of this appellant, we approach the matter one case at a time and, as is clear in the Statement of Facts, Evaro is unquestionably a resident, though a new one.

Supp. 775 (D. R.I. 1971), *Opinion of the Justices,* 273 N.E.2d 879 (Mass. 1971); *Baxter* v. *Birkins,* 311 F. Supp. 222 (D. Colo. 1970); *Barnett* v. *Lindsay,* 319 F. Supp. 610 (D. Utah 1970); *Sheard* v. *Department of Social Welfare,* 310 F. Supp. 544 (N.D. Iowa 1969); *Rivera* v. *Dunn,* 329 F. Supp. 554 (D. Conn. 1971), *aff'd mem.,* 404 U.S. 1054 (1972). *Shapiro* has been applied in the areas of child custody, *In re Paul and Mark,* 64 Misc. 2d 382, 315 N.Y.S.2d 12 (Family Court 1970); municipal employment, *Ector* v. *City of Torrance,* 28 Cal. App. 3d 293, 104 Cal. Rptr. 594 (2d D. 1972); *York* v. *State,* 498 P.2d 644 (Hawaii 1972); *Donnelly* v. *Manchester,* 111 N.H. 50, 274 A.2d 789 (1971); *but see Krzewinski* v. *Kugler,* 338 F. Supp. 492 (D. N.J. 1972); divorce, *Wymelenberg* v. *Syman,* 328 F. Supp. 1353 (E.D. Wis. 1971); *but see Whitehead* v. *Whitehead,* 492 P.2d 939 (Hawaii 1972) and *Place* v. *Place,* 129 Vt. 326, 278 A.2d 710 (1971); speech therapy, *Sawyer* v. *Vanadzin,* 67 Misc. 2d 772, 325 N.Y.S.2d 684 (S. Ct. 1971); probation conditions, *In re Mannino,* 14 Cal. App. 3d 953, 92 Cal. Rptr. 880 (1971); and a host of voting cases typified by *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972); *Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd mem.,* 405 U.S. 1034 (1972); *Hadnott* v. *Amos,* 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd,* 401 U.S. 968 (1971), to name but a few.

The core question in this case is whether medical care is covered by *Shapiro.* Can a state discriminate against its recent residents by denying them the health care which it would allow to persons who have been in the state longer? Is health care on a plane with "food, shelter and other necessities of life"? It would appear

to be an odd constitutional limitation if a state cannot use residence to cause a person to suffer the pangs of hunger but can permit him to suffer the pain of wheezing and gasping for breath, as in the case of the plaintiff. Nonetheless, the precise question has not yet been answered with an opinion here. Is durational residence classification for medical care purposes an invidious discrimination?

**B. The Historical Development of the Contemporary View of Residence and Its Relationship to the Necessities of Life.**

*Shapiro* is the peak of a constitutional movement which was 40 years in the building. Ours is an immigrating, migrating country. Whatever stability may have been achieved in the 1920's, migration took a vigorous new turn with the Depression of 1929. Led in popular imagination at least by the movement of the "Okies," see J. Steinbeck, *The Grapes of Wrath,* fugitives from the agricultural depression in the Middle West and South began to move to the West Coast. The major shift of American population, sometimes caught up in the phrase the Continental Tilt, was under way. That movement intensified for reasons of job opportunities because of defense development in the western states during World War II. It has continued in varying degrees to date so that in the recent past, California at last became America's most populous state.

For example, between March, 1967, and March, 1968, 36.6 million Americans over the age of one year moved. Of that number, 23 million moved within counties, 6.6 million within the same state, and 7 million between states. In the 21 annual surveys of movement between 1948 and 1969, the total percentage of Americans moving has been essentially stable; it has not varied 3 percentage points. Mr. Evaro, in moving from one state

to another, was one of a group of more than 7 million Americans who did the same thing.[3]

The movement of people, at various times, has been both welcomed and resisted. During the Depression, the receiving states had some reluctance to allow added poor to share the general poverty, and so efforts were made to stop migrants at the border. This was precluded in the landmark decision of *Edwards* v. *California*, 314 U.S. 160, 62 S. Ct. 164, 86 L. Ed. 119 (1941).

More subtle barriers than an absolute blockage of movement were also attempted. Even after the federal government began subsidizing assistance programs in 1935, federal law allowed the continuation of strict residence requirements by states without loss of federal assistance.[4] A leading discussion concerning residency requirements came in connection with the Economic Security Act of 1935.[5] In testimony before the Senate Committee, Mr. Charles H. Houston, representing the

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[3] The data is taken from Bureau of Census, Population Characteristics, Series P-20, No. 188, Aug. 14, 1969, p. 1.

[4] Maximum residence requirements were set by the Social Security Act of 1935 for various types of assistance. One required states to provide certain types of assistance to applicants who had resided within the state five of the last nine years. Act of Aug. 14, 1935, ch. 531, § 2(b)(2), 49 Stat. 620 (1935). Another gave relief to persons who had resided therein continuously for one year immediately preceding the application. *Id.*, § 402(b)(2), at 627. Besides interstate restrictions, a number of states also adopted intrastate requirements. Most often, these restrictions were intercounty residence requirements whereby an applicant became eligible for assistance only by residing in a county for a designated length of time. See Note, *Residence Requirements in State Public Welfare Statutes-I*, 51 *Iowa L. Rev.* 1080, 1088-89 (1966). This Arizona statute has such an intercounty restriction.

[5] *Hearings on S. 1130 Before the Comm. on Finance*, 74th Cong., 1st Sess. (1935).

National Association for the Advancement of Colored People, denounced as the "cruelest kind of illusion" any plan under which a state might "dangle in front of [the poor] an old-age-assistance provision, and then say they have to starve in one state" for a certain amount of time before they can qualify for it.[6] Mr. Houston, the first person we have found attacking all state residence limitations of essential care, said: "If you have to have any residence requirement whatsoever, it would be sufficient to establish a national residence requirement."[7]

Dr. Ellen Potter, representing the National Committee on the Care of Transient and Homeless, addressed herself to the "legal responsibility for the care of this army of wanderers" and spoke of the development of a program for the care of transients (defined as anyone who has been in the state for less than one year). The plan at that time contemplated "under the federal regulations: shelter, food, clothing, medical and health service (excluding hospitalization)." Her testimony was the first we have found fully to recognize that problems of short-term residents "could not be adequately handled by private agencies, operating community by community."[8] A House hearing at the same time[9] heard testimony from Mr. Ralph Whitehead, representing the American Federation of Actors, to the effect that no residence requirement longer than that required for voting should be permitted.[10] The first

[6] *Id.* at 643.

[7] *Id.*

[8] *Id.* at 522-31.

[9] *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. (1935).

[10] *Id.* at 831-32.

actual legislation appears to have been a special amendment to the original act of the Emergency Relief Administration.[11]

The interrelation of medical with all other types of essential care was recognized from the beginning; in January, 1935, the Committee on Care of Transient and Homeless, responding to a request from Louis Howe on behalf of President Roosevelt, submitted a report on the problems of this group and said: "It is now known that a considerable number of the transient group require institutional, custodial, or specialized medical care of various kinds." [12]

The idea gained adherents and scope with a rising awareness of facts, and a small group notion in the 1930's became official policy in the 1940's. In 1945, Mr. Arthur J. Altmeyer, Chairman of the Social Security Board, called on Congress for the total abolition of residence requirements as a condition of public assistance. He thought this imperative to protect free travel. Inevitably, he said "a substantial number of migrants should need public assistance before they could become self-supporting." Reviewing the population movement, he found that it had "changed its character with the beginning of the defense construction boom." Between 1941 and 1945, he told Congress, 15 million Americans moved, and 6 percent of the entire population moved to a different state. He added:

> "All proposals retaining residence requirements in public assistance are inconsistent with the goal

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[11] Act of May 12, 1933, ch. 30, 48 Stat. 55. Congress, in a special amendment to the original act of the Emergency Relief Administration, designated the care of the transient poor as a special federal responsibility. *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. at 537-38 (1935).

[12] *Hearings on H.R. 4120 Before the House Comm. on Ways and Means*, 74th Cong., 1st Sess. 539 (1935).

> of providing aid to all needy people. These requirements are time consuming to apply and cause delay in making aid available. They are wasteful and administratively cumbersome. While every reduction in these requirements qualifies some people who otherwise would not be eligible, some needy people still continue to be barred. The only way to qualify all otherwise eligible needy people is to abolish all residence requirements completely." [13]

Mr. Altmeyer stressed that a healthy economy required a mobile economy. He relied on the recommendation of the Council of State Governments that residence requirements were a "handicap to the prosecution of the war." [14]

Throughout the 1950's and '60's, the National Travelers Aid Association took the lead in the effort to eliminate residence requirements. The heart of the argument was the necessity of mobility for the American people; in the view of National Travelers Aid, "people must be free to move where their labor is needed." [15] Recognizing that states "with attractive year round climates" have been especially concerned about the possible influx of persons wishing to move there, a Commissioner of Welfare in 1963 nonetheless called for a total abolition of residence requirements.[16] The National Social Welfare Assembly published a statement entitled "Mobility and Progress," applying the principles of *Edwards* v. *California, supra,* and

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[13] Altmeyer, *People on the Move, Effect of Residence Requirements for Public Assistance, Soc. Sec. Bull.* 2 (1946).

[14] *Id.* at 5 n.7.

[15] National Travelers Aid, *National Social Welfare Assembly Residents Roundup* 1, Apr., 1961.

[16] Address by Ellen Winston, Commissioner of Welfare, HEW, to Travelers Aid, May 23, 1963, in HEW collection.

called for "no exclusion" of any person from welfare programs because of residence.[17] As Travelers Aid has said, people did have to be free to move where their labor was needed.[18]

In this same spirit the 51st Governor's Conference in August, 1959, recommended a system of interstate compacts whereby no citizen would be handicapped because of residence.[19] The Advisory Council on Public Assistance, HEW, in 1959 called for the abolition of all residence requirements in all state programs to aid "free movement of people,"[20] and The White House Conference on Children and Youth in 1960 recommended that "residence requirements for public welfare service should be eliminated."[21] So did The White House Conference on Aging, and the 1960 Democratic platform recommended that all federal aid should be "without regard to residence." In 1961 Senator Humphrey contended that the whole idea of residence requirements for these purposes "seems ridiculous and even downright unAmerican to me."[22]

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[17] National Social Welfare Assembly, *A Position Statement Entitled "Mobility and Progress"*, 3 (1962).

[18] National Travelers Aid, n.15 *supra*.

[19] *Id.*

[20] *Id.* at 5.

[21] *Id.* at 7.

[22] *Id.* at 9. Groups opposing residence requirements in approximately 1960 included the National Council of the Churches of Christ, the National Federation of Settlements and Neighborhood Centers, the Community Funds and Councils of America, the Council of Jewish Federations and Welfare Funds, and many others. See *Statement of the Council of Jewish Federations and Welfare Funds, Inc.*, June 10, 1957; *Statement of Principles on Residence Laws* by the National Travelers Aid Association, Mar. 23, 1956.

Medical care was the most urgent need; as was said at the time, "in most places in this nation, a community will demand that medical care be given even if not food and shelter." [23] The almost total abolition of residence requirements for medical care began even before the decision of this Court in *Shapiro*. The Kerr-Mills Act of 1960 [24] provided that there might not be any exclusion, in giving medical care to the aged, of "any individual who resides in the state." This was in accord with the recommendations of HEW in President Eisenhower's administration; while the bill was under consideration, Senator Humphrey had proposed that all residence requirements over one year be abolished and that the federal government bear the costs for the one year. HEW opposed this proposal, believing instead that this problem "should be resolved within the framework of the present system of State Assistance programs," and it was, as has been noted, by forbidding durational residence requirements entirely in all state programs under Kerr-Mills. This provision was carried over into the Medicaid program in 1965.[25] Kerr-Mills illustrates the primacy of medical

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[23] Address by Laurin Hyde, *The Trouble With Residence Laws*, American Public Welfare Association's National Biennial Roundtable Conference, in Chicago, Dec., 1957.

[24] Act of Sept. 13, 1960, Pub. L. No. 86-778, 74 Stat. 924. For a general review of health care legislation in relation to Social Security, see Stevens & Stevens, *Medicaid: Anatomy of a Dilemma*, 35 *Law & Contemp. Prob.* 229 (1970). For an able review of residence requirements and their history as they existed up to 1958, see J. ten Broek, *The Constitution and the Right of Free Movement* (1955); and for a rewarding account, Rosenheim, *Shapiro* v. *Thompson, Supreme Court Review* 303 (1969).

[25] *Hearings on H.R. 12580 Before the Senate Finance Comm.*, 86th Cong., 2d Sess., at 506-07. 42 U.S.C. § 302(5)(2) provides that in the administration of the Medicaid program there may not

over any other kinds of welfare care, for under that statute, a residence requirement might be imposed for some other kinds of welfare but not for health care. The 1960 policy as established in the Senate Committee report was that "in order to meet the practicalities of providing an effective medical program for this low income group, a state should not be permitted to have as an eligibility requirement a durational residence requirement which excludes any individual who resides in the state." [26] There might be residence requirements for other purposes, but not for medical purposes.[27] Even after the 1965 amendments, the Social Security Act continued to permit year residence limitations for Aid to Dependent Children,[28] limitations which this Court invalidated in *Shapiro*. As a further illustration of the primacy of indigent medical care, the Hill-Burton program for hospital construction requires that state plans for hospitals provide, without regard to duration of residence, "for all persons residing in the

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be "any residence requirement which excludes any individual who resides in the State." As the legislative history shows, the provision was intended to "assure comparable treatment for all of the needy aided under the federally aided categories of assistance." *United States Code Congressional and Administrative News*, at 1943, 2017 (1965). This provision came from the Kerr-Mills Act of 1960. Act of Sept. 13, 1960, Pub. L. No. 86-778, § 601(b)(2), 74 Stat. 924.

[26] *United States Code Congressional and Administrative News*, at 3715-16 (1965).

[27] Kerr-Mills provided that for old age assistance a state could require residence of five of the nine years immediately preceding the allowance, but that the state might not "in the case of applicants for medical assistance for the aged, exclude [any individual who resides in the State]."

[28] 42 U.S.C. § 602(b)(2).

state" and "furnish needed services for persons unable to pay therefor." 42 U.S.C. § 291c(e).[29]

Since 1960, residence requirements have been on the retreat. In 1961, Congress gave extensive attention to the care of true transients, the domestic agricultural migrants; see 42 U.S.C. § 242(h)(10). It considered the hazards to the whole community of health neglected; epidemics, as for example diptheria, began with migrant families and spread into the whole population. Preventive care was far more effective than trying to stop an epidemic once it had started, and Congress finally concluded that there was no significant difference between truly migratory workers and seasonal workers.[30]

By 1961 the Department of Health, Education and Welfare had discovered that the states were "in too many instances" giving medical relief only "on an emergency, last resort basis." This, HEW said, results in costs which are picked up "by the paying patient and by the person or institution rendering the care."[31] Other states reported the problems which arose from the "lack of early hospitalization to those

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[29] The same section goes on to authorize issuance of regulations conditioning approval of project applications upon assurances that "(1) the facility or portion thereof to be constructed or modernized will be made available to all persons residing in the territorial area of the applicant; and (2) there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor, but an exception shall be made if such a requirement is not feasible from a financial viewpoint." 91-771

[30] House Rep. No. 91-771, *United States Code Congressional and Administrative News* 2501 (1970).

[31] HEW, Report on Medical Resources Available to Meet the Needs of Public Assistance Recipients, 73 (1961).

in need," all of which result in spreading costs over paying patients; for when a state will not pay, then, unless persons are turned away from the hospitals to die, the other users, said HEW, "are, in effect, taxed for it and at a rather inconvenient time."[32] Hence, the Department concluded that "medical care is a basic necessity of life," and must be regarded as such for all residents.[33]

In summary, in the three decades between the Depression and the late 1960's, durational residence limitations on the necessities of life were utterly condemned. From the small voices of the 1930's to the emphatic recommendations of Republican and Democratic administrations and legislators of all shades of opinion came the conclusion that residence requirements going to the level of existence itself could not be endured. They were incompatible with American traditions of movement, discriminated unconscionably between people, and were likely to result, particularly in the medical field, in the spreading of disease and in unacceptable burdens to other patients and institutions. Most medical restrictions were knocked out by legislation in the 1960's, and this Court, translating this national policy into the constitutional doctrines of right to travel and equal protection, gave the *coup de grace* to welfare residence requirements in the *Shapiro* case.

### C. The Situation Today as to Medical Care.

*Shapiro* did not deal in express terms with durational residence requirements as a condition of medical care, though it dealt broadly enough with the topic

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[32] *Id.* at 74.

[33] *Id.*

so that many might well suppose that medical care was covered. Medicaid, Title XIX of the Social Security Act, precluded a residence requirement for all state-adopted programs. Arizona is the only state which has not adopted Medicaid, and this contributes to its isolation on the immediate subject. Medicaid programs, however, differ among themselves, and not all state residence requirements are necessarily precluded by it since only a portion of state medical care is through Medicaid programs.

There is, so far as we know, no compilation published either by HEW or otherwise, covering the extent to which states presently seek to impose any durational residence requirements on medical care or hospitalization. Consequently we have, through the hospital association in each state, compiled a report for this Court, reproduced in Appendix B to this brief. As it shows, Medicaid eliminated most residence requirements and *Shapiro* knocked out the bulk of the rest. Decisions in some cases held that *Shapiro* applied to hospitalization; *see, e.g., Valenciano* v. *Bateman,* 323 F. Supp. 600 (D. Ariz. 1971), the conflicting decision tangentially under review here. Medical care is so obviously one of the necessities of life that most states concluded as a common sense matter and without litigation that residence requirements of this sort necessarily fell with *Shapiro.* For illustration, see the response from the State of Michigan to our inquiry:

> "The Michigan Department of Social Services advises that the Michigan statutory durational residence requirements as a condition of public payment for indigent medical care are inoperative because of the U.S. Supreme Court decision in *Shapiro* v. *Thompson* (394 U.S. 618)."

The upshot is that so nearly as we are aware, only five states do, at the present time, apply any kind of durational residence requirement as a condition on medical care. One is Arizona, where the requirement has been both invalidated and upheld, a conflict which gives rise to this appeal. The other four are Colorado, Mississippi, Nebraska and Florida.[34]

In *Shapiro,* this Court had to invalidate an act of Congress to reach its result. In the instant case, this Court is called upon to do no more than make a last application of principles which have won virtually universal acceptance. Where Congress has itself concluded that a classification is "inherently invidious," then "this conclusion of a coequal branch of Government is not without significance to the question presently under consideration." *Frontiero* v. *Richardson,* 93 S. Ct. 1764, 1771 (1973).

## II. SHAPIRO v. THOMPSON REQUIRES THE REVERSAL OF THE JUDGMENT BELOW: HEREIN OF ITS APPLICATION TO THE ARIZONA STATUTE.

### A. The Arizona Statute Requiring a Year's Residence in the County, as Well as the State, Is Even Stricter than the Year Durational Residence Requirements Struck Down in Shapiro.

In *Shapiro* v. *Thompson,* this Court invalidated state statutes which created "two classes of needy resident families indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less

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[34] Colorado Rev. Stat. Ann. §§ 36-10-21, -22 (Supp. 1971); Mississippi Code Ann. § 43-31-19 (Supp. 1972); Nebraska Rev. Stat. §§ 68-103, -115 (Supp. 1972). A Florida statute involving one county was invalidated in *Crapps* v. *Duvall County Hosp. Authority,* 314 F. Supp. 181 (M.D. Fla. 1970). However, we are advised one-year residence requirements are unofficially imposed for county medical programs.

than a year, in the jurisdiction." *Shapiro, supra* at 627. This Arizona statute creates two such classes. The plaintiff denied County care in this case had traveled from another state. The only residency distinction between the Arizona statute and the state statutes in *Shapiro* is that the Arizona statute requires not merely state residency, but residency within the particular county as well. To this extent, the Arizona statute is even more restrictive in its classification than those invalidated by this Court in *Shapiro.*

The appellee County and the Supreme Court of Arizona below have erroneously attempted to draw some meaningful constitutional distinction between a local residence requirement and a state residence requirement. To the contrary, the right to travel and to use facilities of interstate commerce within a state is as constitutionally protected as the right to travel between states. Thus in *Dunn* v. *Blumstein,* 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972), the Court struck down in one blow both state and county residence requirements for voting as violative of the right to travel. In *United States* v. *Guest,* 383 U.S. 745, 757-59, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966), relied upon in *Shapiro, supra,* this Court took cognizance of the constitutionally protected right of all citizens to use the highways and other instrumentalities of interstate commerce within a state, as well as in traveling from state to state.

The lower courts have almost without exception recognized that the principles of *Shapiro* are applicable to movement within a state as well as to movement between states. The First Circuit Court of Appeals followed *Shapiro* to strike down a community residency requirement for public housing, *Cole* v. *Housing Authority of City of Newport,* 435 F.2d 807 (1st Cir. 1970). The Second Circuit, a year later, also struck

down a community residence requirement for public housing in *King* v. *New Rochelle Municipal Housing Authority*, 442 F.2d 646 (2d Cir. 1971), *cert. denied*, 404 U.S. 863. Judge Waterman in that case summed up the question in its constitutional framework by the following language: "It would be meaningless to describe the right to travel between states as a fundamental precept of personal liberty and not to acknowledge a correlative constitutional right to travel within a state." *King* v. *New Rochelle Municipal Housing Authority, supra* at 648.[35]

The conclusion reached in all of these cases is inescapable, both as a matter of constitutional theory and of common sense. As this Court's opinion in *Shapiro* explains, "the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement." 394 U.S. at 629. A local residence statute like Arizona's affects not only those like the appellant Evaro in this very case, who traveled

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[35] Other courts have dealt with local residence requirements in a variety of contexts and have considered the distinction between a state and local requirement as irrelevant. *Nicholls* v. *Schaffer*, 344 F. Supp. 238 (D. Conn. 1972), held that the principles of *Shapiro* applied to a six-month's town residency requirement for voting. In *Demiragh* v. *DeVos*, 337 F. Supp. 483 (D. Conn. 1972), the court struck down a local residency requirement for welfare established not by statute, but by municipal ordinance. The court described "the unquestioned right of all citizens to enter and reside in any state or town in the United States." *Id.* at 489. Any distinction between the protection accorded interstate and intrastate movement was considered irrelevant in two cases dealing with local requirements that city employees be residents of the city by which they were employed. *Donnelly* v. *Manchester*, 111 N.H. 50, 274 A.2d 789 (1971); *Krzewinski* v. *Kugler*, 338 F. Supp. 492 (D. N.J. 1972).

from one state to another, but also the 6 million Americans who each year move between counties but within the same state. It is Alice in Wonderland justice to hold, as does the court below, that while it is unconstitutional to discriminate against the 7 million Americans who move annually between states, the illegality is erased if one adds to the discrimination 6 million additional persons who only moved between counties.

The County buttresses its contention that somehow counties are different by contending that *Shapiro* applies only where federal funds are involved, as they are not here. *Pease* v. *Hansen,* 157 Mont. 99, 483 P.2d 720 (1971), *rev'd,* 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971), settled this question to the contrary of the County's position. There the Montana court had held that *Shapiro* did not apply to a durational residence requirement for general assistance funded solely by the county. This Court reversed in a per curiam opinion holding that whether a welfare program is or is not federally funded is irrelevant to the applicability of *Shapiro* principles.[36]

### B. The Arizona Residence Requirement for Medical Care Penalizes the Exercise of the Right To Travel.

We cannot prove that the Arizona residence requirement keeps people out. The Bureau of the Census has reported that the population shift from 1950 to 1960 showed Arizona to be one of five states with increases of more than 20 percent. It has long been recognized that some people come to this benign land for their health;

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[36] *Graham* v. *Richardson,* 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971) held that denial of welfare benefits to aliens was constitutionally impermissible. In that case the benefits provided by one state were federally assisted, and the program of the other state was state funded. This Court treated the two programs as indistinguishable for the purposes of its decision.

thus, "Florida, New Mexico, and Arizona show registration high in proportion to their population, probably due to climatic conditions and the search for health." [37] Ponce de Leon is not the last to have come to one of the kindly climates of America for his health, and undoubtedly this draws American citizens to travel and to become residents of Arizona. This is their right. There is no hard estimate of how many more would have come to a more hospitable reception.

We can prove that the object of this restriction is to exclude people. The legislative history of this statute shows, and the County's Motion to Affirm in this Court concedes in effect, that the statute acts as a barrier to keep out indigents who are ill, and who wish to reside in Arizona, and specifically in Maricopa County.

Maricopa County is the county in which Phoenix and surrounding communities are located. It is the largest metropolitan area in the mountainous and desert terrain of the southwestern region of this country, a region encompassing not only Arizona, but the states bordering to the north and east. The County's Motion to Affirm expressly looks to the danger that should this statute be invalidated, Maricopa County would be "flooded" by indigents from other and poorer counties in the state, and in the long run from the entire country.

The Arizona Legislature passed a Memorial during the same session in which it established these residence restrictions. That Memorial (Appendix A to this brief) demonstrates that Arizona has long been a state to which those with chronic respiratory and other ailments look for healthier climes in which to find gainful employment. It was there estimated that of Arizona's

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[37] *Hearings on S. 1130 Before the Comm. on Finance*, 74th Cong., 1st Sess. 526 (1935), referring to emergency relief registration.

indigent sick, 86 percent were recent arrivals. The Memorial called on Congress to deal with "these visitors" who were "in such poor circumstances" because it was "not just" to dump this "burden" on Arizona. The accompanying state legislation shows that the purpose of the County's approach was to insulate the rural counties and stick Maricopa County, which, as a legislator said, "is so unfortunate as to receive most of the indigent sick of the state."[38]

The constitutional right to travel is firmly established, whatever clause of the Constitution is its foundation, *United States* v. *Guest,* 383 U.S. 745, 756, 86 S. Ct. 1170, 16 L. Ed. 2d 239 (1966); Note, *Travel, Wel-*

[38] The available legislative history shows that the major issue surrounding the bill was whether counties were to be responsible for health care costs. Representatives of Maricopa, the most populous county, opposed the county approach, believing the state as a whole should bear the burden. For example, Philip A. Isley stated:

> "The members of Maricopa county, as a rule, have been willing to yield to the outside counties as per tax distribution. In our session of the thirteenth legislature we submitted to the outside counties as to distribution of sales tax, and in the twelfth regular session, I voted with the outside counties of the state for the distribution of the gasoline tax for road maintenance, as I felt that these smaller counties, without the assistance of our gasoline tax, would not be able to build trails in most instances. I voted with them because I felt that it was only fair to the state at large.
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> "In this instance we have exactly the same condition, only reversed, and I feel that inasmuch as Maricopa county is so unfortunate as to receive most of the indigent sick of the state, it would only be fair for the smaller counties of the state to give us the same assistance in caring for the indigent sick of the state as we extended to them in the construction and maintenance of their roads." *H. R. Jour.*, 13th Ariz. Leg., 3d Spec. Sess. 262 (1937).

Likewise, Rep. W. W. Mitchell noted:

> "The care of indigent sick is a charge of the whole commonwealth and unless the state is to assist in this burden, I will be obliged to vote 'no'." *Id.* at 263.

*fare and the Constitution,* 44 *N.Y.U. L. Rev.* 989 (1969); and for concise cases on origin, see Comment, 86 *Harv. L. Rev.* 104, 113 n.44 (1972). We need not prove that this classification actually deters travel; it is enough that it penalizes travel, *Dunn* v. *Blumstein, supra,* 405 U.S. at 340, and for emphatic restatement that the mere existence of the penalty is enough, *see Affeldt* v. *Whitcomb,* 319 F. Supp. 69 (N.D. Ind. 1970), *aff'd,* 405 U.S. 1034 (1972). But while we need not prove actual deterrence, here, as in *Shapiro,* we show express purpose from the brief already filed by the County on the issue of probable jurisdiction:

| *Shapiro* | *Maricopa County Brief* |
|---|---|
| "There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific objective of these provisions . . . [The validity of the Act] was frankly defended on the ground that it is designed to protect the jurisdiction from an influx of persons seeking more generous public assistance than might be available elsewhere." | "Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment, while the long-term effect would be that indigent persons throughout N o r t h America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency in M a r i c o p a County. In either the long- or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments." |

*Shapiro* held such purposes and justifications to be "constitutionally impermissible."

**C. Health Care Is as Fundamental a Necessity of Life as General Assistance Welfare Payments.**

In *Shapiro,* this Court dealt with year residence requirements for public assistance payments. Such payments are made under a variety of federally and state funded programs lumped under the general label of "welfare." Publicly assisted health care is simply a part of welfare. One commentator has stated:

> "I shall ordinarily use the term 'welfare' to mean public assistance. But these so-called categorical aids do not exhaust the range of what is conveniently (though inaccurately) termed the welfare 'system.' At a minimum, that phrase connotes a heterogeneous collection of social insurance and public assistance programs disbursing cash, health, and medical benefits 'in kind,' as well as such direct service programs as child welfare, vocational rehabilitation, and school meals (to cite a few examples)." Rosenheim, *Shapiro* v. *Thompson: The Beggars Are Coming to Town, Supreme Court Review* 303, 305 (1969).

As was developed in Part I of this Argument, historically, medical care has been regarded as even *more* fundamental than the rest of welfare. It is not surprising that all the decisions on residence requirements for health care have, with the single exception of the opinion below, struck down such requirements as violative of the principles enunciated in *Shapiro. Vaughan* v. *Bower, supra; Crapps* v. *Duvall County Hosp. Authority,* 314 F. Supp. 181 (M.D. Fla. 1970); *Valenciano* v. *Bateman, supra; Arnold* v. *Halifax Hosp. Dist.,* 314 F. Supp. 277 (M.D. Fla. 1970).

The court in *Valenciano* v. *Bateman, supra,* at 603, considered the very Arizona statute at issue here, and concluded as follows:

> "The effect of A.R.S. 11-297 is to create two classes of indigent persons in need of hospital or

> medical care indistinguishable except on the basis of the length of their residence in a particular county. A statutory scheme which requires a county official to withhold such fundamental public benefits to residents of that county on the basis of whether or not they have resided therein for the duration of one year constitutes an 'invidious classification.' ... [W]e hold that hospitalization and medical care for indigents are benefits essential to the preservation of their life and health in the context of the holding of *Shapiro, supra.*"

Since *Shapiro,* lower courts have considered its applicability to residence requirements imposed not merely on public assistance, health care and other welfare related programs, but to a wide spectrum of benefits. This Court has affirmed the application of *Shapiro* principles to health care in a case striking down a statute conditioning mental patient care upon a year's Arizona residence. *Vaughan* v. *Bower, supra.* With due consideration of nonemergency care under the instant statute, which it recognized to be even more essential than the mental health care in *Vaughan,* the Court concluded that the one-year requirement could not stand.

It is also significant that courts which have refused to expand *Shapiro* principles to other areas of government service have impliedly recognized that *Shapiro* applies where residence classifications deny medical care. Thus, in *Kirk* v. *Board of Regents of Univ. of Cal.,* 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), *appeal dismissed,* 396 U.S. 554 (upholding residence requirements for lower tuition at state universities) the court expressly recognized that under *Shapiro,* durational residence requirements were impermissible

for benefits necessary to "the preservation of life and health":

> "While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro* involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirements for attendance at publicly financed institutions of higher learning do not involve similar risks. Nor was petitioner (unlike the families in *Shapiro*) precluded from the benefit of obtaining higher education. Charging higher tuition fees to nonresident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents." 78 Cal. Rptr. at 267.

The language just quoted was cited with approval in *Starns* v. *Malkerson,* 326 F. Supp. 234, 238 (D. Minn. 1970), *aff'd,* 401 U.S. 985 (1970), also dealing with durational residence requirements for tuition.[39] These courts have recognized that *Shapiro* must be applied to benefits directly related to the preservation of life and health. Surely nothing is related so directly as medical and hospital care.

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[39] For other cases involving residence classifications for tuition, see *Arizona Bd. of Regents* v. *Harper,* 108 Ariz. 223, 495 P.2d 453 (1972); *Thompson* v. *Board of Regents of the Univ. of Neb.,* 187 Neb. 252, 188 N.W.2d 840 (1971); *Fox* v. *Trustees of Consol. Univ.,* 16 N.C. App. 53, 190 S.E.2d 884 (1972); *Glusman* v. *Trustees of the Univ. of N.C.,* 281 N.C. 629, 190 S.E.2d 213 (1972), *appeal docketed,* 41 *U.S.L.W.* 3351 (U.S. Oct. 25, 1972) (No. 72-635).

## III. NO COMPELLING GOVERNMENTAL INTEREST SUSTAINS THE ARIZONA STATUTE.

### A. Where a Durational Residence Classification Penalizes the Exercise of the Right To Travel, the Classification Can Be Sustained Only by a Compelling Governmental Interest.

The appropriate equal protection standard to be applied in this case was laid down in *Shapiro*. A waiting period provision which denies fundamental benefits to otherwise eligible applicants solely because they have recently moved into the jurisdiction penalizes the exercise of a constitutional right to travel. Therefore, "any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro, supra,* at 634.

Application of the compelling interest standard flows inescapably from the two most obvious facets of this statute with which we have already dealt at length. First, this statute, like the statutes in *Shapiro,* creates classifications based solely on length of residence. This durational residence classification, like that in *Shapiro,* serves to deny benefits to those otherwise eligible solely because they have recently exercised their constitutional right to travel by moving into the jurisdiction.

Second, this case involves not merely a residence classification, but one conditioning care fundamentally necessary to the preservation of life and health.

We recognize that this Court in *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed 2d 491 (1970) applied a different standard in dealing with restrictions on welfare benefits. The Court there sustained a state-imposed ceiling on the amount any family could receive under a welfare program. The Court

held that the $250 ceiling on the amount of Aid for Dependent Children grants bore a reasonable relationship to legitimate state interests in economy, encouraging employment and avoiding discrimination between welfare families and families of the working poor. But *Dandridge* involved a ceiling applied to all families across the board. There was no durational residence requirement and no resultant invidious discrimination impinging upon the right to travel. The Court's opinion in *Dandridge* expressly noted, in applying traditional standards of equal protection, "[i]t is enough that the State's action be rationally based and *free from invidious discrimination.* The regulation before us meets that test." 397 U.S. at 487 (emphasis added). The statute in this case does not.

In this Court's subsequent opinion in *Graham* v. *Richardson,* 403 U.S. 365, 91 S. Ct. 1848, 29 L. Ed. 2d 534 (1971) the Court reiterated the reason for the application of the compelling interest standard in *Shapiro:* "It is enough to say that the classification involved in *Shapiro* was subjected to strict scrutiny under the compelling state interest test, not because it was based on any suspect criterion such as race, nationality, or alienage, but because it impinged upon the fundamental right of interstate movement." 403 U.S. at 375. The Court, speaking through Justice Blackmun, went on to distinguish *Dandridge:* "Appellants' attempted reliance on *Dandridge* v. *Williams,* 397 U.S. 471, (1970), is also misplaced, since the classification involved in that case (family size) neither impinged upon a fundamental constitutional right nor employed an inherently suspect criterion." 403 U.S. at 376.

The compelling state interest test applies where the right is "fundamental," the discrimination "invidi-

ous." Under *Shapiro* and all subsequent cases, the right to travel is fundamental and a residence discrimination is invidious.

**B. Financial Protection to Taxpayers, at the Expense of New Residents, Nonpublic Hospitals, and Other Patients, Is Not a Compelling Justification.**

The principal justification offered by Maricopa County for this statute is that elimination of the residency requirement would be costly. The County estimates that for the first year of abolition (and significantly the only figures offered are for the first year) the number of in-patient days hospitalization for indigent new residents would be 20,000 at an estimated total cost of $1,500,000. The estimated number of out-patient clinic visits for indigent new residents would be 17,500, at a cost of $350,000 (A. 13, 14). The County estimates that the elimination of residence requirements would require for the first year an increased budget expenditure of approximately 3.27 percent (A. 21).

The County's own figures, rough estimates though they may be, illustrate vividly our own position: that the need for medical care is large and a system which denies needed medical care to so many for the sole reason that they have recently moved to the jurisdiction works an invidious discrimination.

As *Shapiro* establishes, the mere saving of costs cannot justify an otherwise invidious classification; and see for the proposition that dollars "are not overriding in the welfare context," *Goldberg* v. *Kelly,* 397 U.S. 254, 266, 90 S. Ct. 1011, 25 L. Ed. 2d 287 (1970). While fiscal considerations are legitimate interests of government, they cannot constitute a compelling state interest justifying denial of such urgently needed benefits solely

on the basis of residence. This principle has been applied even where the governmental entity has pleaded that its own finances were in a state of dire emergency. See *Rivera* v. *Dunn*, 329 F. Supp. 554 (D. Conn. 1971), *aff'd mem.*, 404 U.S. 1054 (1972):

> "The Supreme Court, however, has made it quite clear that conservation of the public fisc is not a sufficient ground to authorize a residence statute which also has the effect of limiting the right of certain citizens to travel freely throughout the United States." 329 F. Supp. at 558.

*See also In re Smith*, 323 F. Supp. 1082, 1088 (D. Colo. 1971); *In re Naron*, 334 F. Supp. 1150, 1141 (D. Ore. 1971), both involving filing fees for bankruptcies; *Friedler* v. *University of State of New York*, 70 Misc. 2d 446, 333 N.Y.S.2d 928 (S. Ct. 1972), involving impermissible denials of "scholarship incentives" to aliens.

Here we have the assertion of economic considerations in the purest form. There is no grave emergency facing Maricopa County; it is not argued that the tax rate could not be raised on a county level; if, as it appears, the concern is that there is too great a burden in Maricopa County as opposed to the rest of the state, then the burden could be shared on a wider tax base. In this regard, the legislative history of this statute shows that the statute was originally enacted over the protests of Maricopa County representatives who urged that the burden of medical care should be shared by the entire state and not imposed largely upon taxpayers in Maricopa, the most populous county.[40]

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[40] See Section II, B of this brief, *supra*.

Let us look at the other side of the coin. If these burdens are not to be borne by the taxpayers, then, under the present system, who does bear them? For those newly arrived indigent residents who receive no care whatsoever, the cost is borne by their own suffering and, indirectly, by the welfare funds which must provide for their subsistence. For those, who like Mr. Evaro in this case, do receive hospital care at other than county expense, then the cost is borne by the non-public hospitals and must be passed on to the paying patients of those hospitals. As was said in a 1961 HEW Report quoted earlier, "The cost of providing this free care is in large measure passed on to paying patients. They are, in effect, taxed for it and at a rather inconvenient time." [41]

While the County is concerned about increases in its tax level due to spreading the cost of such indigent care over the tax base of the County, the fact is that the cost of health care has increased at a vastly higher rate than other costs. The result is increasing pressure on the poor and upon all patients of hospitals. The average health bill for each American was $79 in 1950 and $324 in 1970, a rise of 7.3 percent a year. During this period, the average increase in wage levels was 4.3 percent a year.[42] Throughout the 1960's, medical prices jumped almost twice as fast as prices for all consumer items [43] and the largest of

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[41] HEW, Medical Resources Available to Meet the Needs of Public Assistance Recipients, No. 1799 (Comm. Print 1961) (report submitted to Comm. on Ways and Means).

[42] Staff of House Comm. on Ways and Means, 92d Cong., 1st Sess., Report on the Basic Facts on the Health Industry 10 (Comm. Print 1971).

[43] *Id.* at 15.

the expenditures was for hospital care.[44] The County's reluctance to share some of these costs for all of its indigents, regardless of the length of their residence, and its desire to force the burden elsewhere can hardly be termed a "compelling interest."

What is more, the County has made no effort whatsoever to demonstrate any long run economic drain on its resources by abolition of its residence requirement. There may be a long run saving:

> "When asserting the interest in maintaining fiscal integrity the state should be required to show that in the long run it would be more expensive to provide hospital services to all indigents. Admittedly, initial costs would be higher because of the administrative changes and the chronic physical conditions of indigents who have gone without essential hospital care in the past. Over a lengthier time span, however, providing equal care might reduce overall state costs. Lack of hospital care may cause the patient's condition to deteriorate to a point where emergency hospitalization is required. Not only may more and longer hospital care be required, but the indigent's family may become a burden on the state's welfare rolls for the duration of his illness or permanently if his capacity to work is impaired.[45]

**C. There Are No Compelling Administrative Advantages to the County Applying a Residence Requirement.**

The County and the court below have also urged that a year waiting requirement facilitates planning for the demands which will be placed on medical facilities. The

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[44] *Id.* at 20.

[45] Comment, *Indigents, Hospital Admissions and Equal Protection*, 5 *U. Mich. J.L.*, 502, 515-16 (1972).

record in this case reveals no evidence whatsoever that the County does in fact use the year waiting period for the purposes of planning for the following year's needs. There are no statistics offered on the number of people arriving each year. There is no indication that new residents are required to report to County medical authorities when they arrive in the state for record keeping purposes. The County's estimates of the increased demand upon hospital facilities which would result from abolition of this requirement are based not on any studies of migration into the state but solely upon projections of the current useage of County medical facilities. The situation is precisely the same as that in *Shapiro,* where this Court rejected the argument that residence requirements facilitate budget planning:

> "The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year. None of the appellants takes a census of new residents or collects any other data that would reveal the number of newcomers in the State less than a year. Nor are new residents required to give advance notice of their need for welfare assistance. Thus, the welfare authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance. In these circumstances, there is simply no basis for the claim that the one-year waiting requirement serves the purpose of making the welfare budget more predictable." 394 U.S. at 634-35.

The claimed planning necessity is illusory, not only because the record fails to show that the County has engaged in such planning, but also because the so-called "emergency" exemption from the waiting period makes planning based upon the year waiting period impracticable even under the existing system. In any event, such purely administrative interests are not overriding or compelling. *Goldberg* v. *Kelly, supra,* at 266.[46]

Nor can the County justify an interest, much less a compelling interest, in avoiding fraud by those who are not bona fide residents. As this Court pointed out in *Dunn* v. *Blumstein,* 405 U.S. at 346-47, the nonresident intent on committing fraud can as quickly and effectively swear that he has been a resident for the requisite period of time as he can swear that he is simply a resident. This Court has also rejected the County's argument that the residence requirement is permissible as an administratively conclusive presumption that recent arrivals are not residents. See *Dunn* v. *Blumstein, supra,* at 349-50. See also *Vlandis* v. *Kline,* 41 *U.S.L.W.* 4796 (June 12, 1973) invalidating an irrebuttable presumption of nonresidence.

**D. The Emergency Exemption Does Not Save the Statute.**

The Arizona statute denies all publicly assisted health care to new resident indigents "except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb." The suggestion is made by the County that this exemp-

[46] The residence requirement may well add to administrative burdens in that verifying residence costs time and money. See Address of Ellen Winston, Commissioner of Welfare, HEW, to Travelers Aid, May 23, 1963, p. 14, urging that modification of residence requirements would lead to administrative savings; and see the statement of Arthur Altmeyer in Part I of this brief.

tion somehow removes the statute from the scope of *Shapiro*. We cannot agree.

The fact that the County might have done worse does not mean that it may not be required to do better; the emergency clause may improve the humanity of the statute without redeeming its unconstitutionality. Just as a given penalty may be a cruel and unusual punishment without going to the final stage of barbarity,[47] so that a denial of equal protection might be worse is no automatic vindication of the discrimination actually done.

The emergency exception in many respects makes a bad matter worse. The concept can range from the cut on the hand or the speck in the eye which any hospital "emergency room" will treat, all the way to a condition of imminent death; "immediate" care "necessary for the preservation of life or limb" is the Arizona definition, A.R.S. § 11-297A. A study of the application of an emergency qualification to care rendered by California counties showed wild diversity of treatment. One county construed the term broadly to cover any care necessary "to prevent future illness or disability"; as a practical matter 13 counties gave no hospital service; nine others gave service "in urgent cases during investigation and establishment of legal residence"; another took care "only of tuberculosis and obstetrical cases." Other counties construed the term to mean that they would care only for those who were "physically unable to return to their legal residence."[48]

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[47] See discussion in *Trop* v. *Dulles*, 356 U.S. 86, 101, 78 S. Ct. 590, 2 L. Ed. 2d 630 (1958); *Weems* v. *United States*, 217 U.S. 349, 371, 30 S. Ct. 544, 54 L. Ed. 793 (1910).

[48] See M. Greenfield, *County Residence Rules as a Deterrent to Medical Care of Migratory Workers*, Institute of Governmental Studies, Univ. of Calif., Berkeley (1964).

One may suspect that the range for arbitrariness here is as great as that precluded as to the committee system in the abortion cases, *Doe* v. *Bolton*, 93 S. Ct. 739, 750 (1973). This is all the more true because, even from the monetary standpoint, care delayed is cost increased and preventive medicine is the best economy. There are repeated illustrations from various states of the proposition that "lack of early hospitalization to those unable to pay has been an economic liability to the individual, to the hospital, to the county and the community . . . ."[49]

But, lest it be said that the use of this empty and economically self-defeating term is within the fair exercise of the states' discretion, let us restate the issue giving every benefit to the state. Let us assume that for this purpose the state is willing to care for new residents who are about to die and for them only. We must assume that the state would also give care to its old residents facing less immediate disaster, but that it desires to deny the same right to the newcomers. We say that as between old residents and new residents the state may not provide that the old resident may have care if he is suffering from serious bronchitis, but that the new resident must wait until pneumonia sets in; that a serious wound will be treated for the old resident but that the new resident must wait for gangrene. In this very case, the state holds that an indigent new resident admittedly requiring hospitalization in order to regain normal breathing powers and function in the community was not deserving of treatment on an emergency basis because, although gasp-

[49] See Report, "Medical Resources Available to Meet the Needs of Public Assistance Recipients" submitted to the House of Representatives, Committee on Ways and Means by the Dept. of HEW, Report 1799, 86th Cong., 1961.

ing, he was not in immediate danger of stopping breathing altogether.

For the reasons previously argued, we contend that the denial of the same health care to new residents as is given to old residents violates the Constitution of the United States. The situation is not significantly altered because the state sees fit to discriminate against most but not quite all of the new residents. A discrimination is invidious if it goes to health; it need not directly menace life. In any case the proof by now is overwhelming that the failure to attend to health needs early, even though the patient in the short term survives, is merely death deferred. A major deficiency in health services in America is that those who can afford it receive health care when they need it and so do not reach the extremes which lead to shorter life spans for the less fortunate.[50] The inability to get early care accounts for the differences in illness among American income groups; the more prosperous die of heart disease and cancer, the poor of the illnesses readily neglected such as influenza, pneumonia, congenital malformations, gastroenteritis and colitis,[51] and new residents from rural areas die

[50] For two of the many discussions of the differences of health and of life spans of the various economic strata of society, see HEW, Delivery of Health Services for the Poor (1967); HEW, White Paper: "Toward a Comprehensive Health Policy for the 1970's" at 2 (1971), with its documentation that economic aspects of life result in "the denial to some of a life span as long and as relatively free of disabilities and illnesses as that which others enjoy." The White Paper defines as "part of the Health Care Crisis" the "large disparities in the geographic location of resources," p. 9. This is particularly true in Arizona, America's fifth largest state geographically.

[51] HEW, Human Investment Programs: Delivery of Health Services for the Poor 22 (1967).

of illnesses they carry with them.[52] A statute of this kind does not create this problem, but it does compound it.

This Court has already passed on the emergency argument made here. The Arizona mental health care program, not by statute but by practice, had operated with the same concept of "emergency" exceptions. The state, seeking to defend that statute, made the same argument from the emergency practice as was offered below. A three-judge court rejected the argument, *Vaughan* v. *Bower,* 313 F. Supp. 37, 42 (D. Ariz. 1970), and see particularly n.5; this Court affirmed without opinion, 400 U.S. 884 (1970).

## IV. ALTERNATIVELY, EVEN UNDER CONVENTIONAL EQUAL PROTECTION STANDARDS, THE ACT IS INVALID.

In the preceding portion of the Argument, we have, we trust, demonstrated that under the compelling state interest test, the legislation is invalid. The court below found the case controlled instead by *Dandridge* v. *Williams,* 397 U.S. 471, 90 S. Ct. 1153, 25 L. Ed. 2d 491 (1970) and, applying a "reasonable basis" test, upheld the statute. While we urge that this durational residence restriction impedes the right to travel and is under the *Shapiro* rather than the *Dandridge* line of cases, we here suggest alternatively that even under the lesser standard of *Dandridge,* this act cannot stand.

> "Under 'traditional' equal protection analysis, a legislative classification must be sustained unless it is 'patently arbitrary' and bears no rational

[52] Report, President's National Advisory Commission on Rural Poverty, 12 (1967).

relationship to a legitimate governmental interest. See *Jefferson* v. *Hackney,* 406 U.S. 535, 546 (1972); *Richardson* v. *Belcher,* 404 U.S. 78, 81 (1971); *Flemming* v. *Nestor,* 363 U.S. 603, 611 (1960); *McGowan* v. *Maryland,* 366 U.S. 420, 426 (1961); *Dandridge* v. *Williams,* 397 U.S. 471, 485 (1970)." *Frontiero* v. *Richardson, supra,* 93 S. Ct. at 1768.

While the test is not difficult to pass, nonetheless the statute must be rationally related to a legitimate governmental goal. Granting that the Court will stretch to find a permissible purpose, *see e.g., Goesaert* v. *Cleary,* 335 U.S. 464, 69 S. Ct. 198, 93 L. Ed. 163 (1948); *Kotch* v. *Board of River Port Pilot Comm'rs,* 330 U.S. 552, 67 S. Ct. 910, 91 L. Ed. 1093 (1947), a merely promiscuous discrimination against all members of a class does not rescue legislation if the purpose itself is irrational; "judicial inquiry under the Equal Protection Clause, therefore, does not end with a showing of equal application among the members of the class defined by the legislation," *McLaughlin* v. *Florida,* 379 U.S. 184, 191, 85 S. Ct. 283, 13 L. Ed. 2d 222 (1964). There must be some sensible connection between a permissible result and the means chosen to achieve it, see *Levy* v. *Louisiana,* 391 U.S. 68, 88 S. Ct. 1509, 20 L. Ed. 2d 436 (1968), *rehearing denied,* 393 U.S. 898 (1968). If the statute is "palpably arbitrary" it is invalid, *International Harvester Co. of America* v. *Missouri,* 234 U.S. 199, 215, 34 S. Ct. 859, 58 L. Ed. 1276 (1914). For discussion of the "palpably arbitrary" standard and its application in recent decisions of this Court, *see* Tigar, *The Supreme Court, 1969* Term, 84 *Harv. L. Rev.* 1, 62-63 (1970).

Here the statute will not withstand even perfunctory judicial scrutiny. The court below, in reaching for

some legitimate purpose, frankly recognizes that the purpose of this statute is to prevent people in other parts of the state from moving to Maricopa County for health care. The Arizona court suggests that the County hospital might be swamped if "any indigent sick person of the state" could get in. We deal, of course, solely with residents and not with transients, so that the fear is somewhat overblown and the court below itself accurately says that it is "perhaps over extended."[53] Yet if residents of Arizona, not more than a quarter of whom live now outside the two metropolitan counties of Maricopa (Phoenix) and Pima (Tucson) are so desperately in need of medical care that they are willing to pull up their residence and move to one of the more populous counties, then this privilege of movement is one they ought to have; their desperation is an inevitable by-product of the circumstance that hospitals are concentrated geographically.[54] Arizona cannot be permitted to compel a person who becomes ill in a rural county to die there in poverty by putting up a fence around the counties which happen

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[53] *Cf. Doe* v. *Bolton*, 93 S. Ct. 739, 751-52 (1973), the Georgia abortion case, which notes that the statute "is not based on any policy of preserving state-supported facilities for Georgia residents," and that a State cannot "limit to its own residents the general medical care available within its borders." Here we deal not with residence, but its duration.

[54] On the maldistribution of hospitals geographically discussed as one of the key medical problems of the country, see HEW, White Paper, Towards a Comprehensive Health Policy for the 1970's (1971). As an extreme illustration, "although North Dakota has more hospital beds per capita than any other State, it averages less than 0.8 hospitals for 1,000 square miles." Staff of the House Comm. on Ways and Means, 92d Cong., 1st Sess., Report on Basic Facts on the Health Industry 48 (Comm. Print 1971).

to be rich enough to have hospitals.[55] The irrationality of the entire argument is heightened in a case which, as here, involves purely interstate movement and obviously good-faith residence.

This Court recently upheld the Texas school financing system, recognizing the right of a state "to draw reasonable distinctions between political subdivisions within its borders," *San Antonio Independent School Dist.* v. *Rodriguez,* 93 S. Ct. 1278, at 1294 n.66 (1973); but in the Texas case no law barred a resident from moving from one part of Texas to another, and this Court carefully emphasized in the very same case that no restriction on the right to travel was involved, see 93 S. Ct. at 1296 n.71 and accompanying text. In the instant case, there is no purpose even imagined by the state court except that of fencing the rural poor out of a metropolitan county. This is not "a legitimate state purpose or interest." *Id.* at 1308.

One must grasp at straws even to suggest a legitimate purpose here. In *Dandridge,* this Court sustained a regulation which had a legitimate purpose in the encouragement of employment through keying welfare benefits to the minimum wage. No such legitimate purpose is even claimed in this case. Indeed, by denying all health care to an indigent until he is at death's door, the statute discourages employment. In *Roe* v. *Wade,* 93 S. Ct. 705, 731 (1973), the Court recognized that a state has an "important and legitimate interest" in preserving and protecting the health of pregnant women who come to the state, regardless of

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[55] Greenlee County has only a mining company proprietary hospital, and Graham County has a 28-bed former hotel (Safford Inn Hospital).

their residence. Such interest is frustrated, not furthered, by the Arizona statute.

If we ask, as *Weber* v. *Aetna Cas. & Sur. Co.*, 406 U.S. 164, 92 S. Ct. 1400, 1405, 31 L. Ed. 2d 768 (1972) tells us we must, "What legitimate state interest does the classification promote?", the answer is nothing. Eight Arizona counties have no county hospitals at all; indigent care can only exist on a contract basis which varies from county to county. No conceivable state of facts, *McGowan* v. *Maryland*, 366 U.S. 420, 426-27, 81 S. Ct. 1101, 6 L. Ed. 2d 393 (1961), can justify as a "legitimate state interest" a rule that a sick person in any part of this land cannot move to a metropolis which has a public hospital for the sake of his health. Any distinction in terms of "old" and "new" residents does indeed give rise to "grave problems under the Equal Protection Clause," *Vlandis* v. *Kline*, 41 *U.S.L.W.* 4796, 4798 n.6 (1973). "Inhibiting migration by needy persons" is precisely what *Shapiro*, 394 U.S. at 629, declares not to be a permissible purpose. It is not permissible "nothwithstanding how compelling the state interest may be," *Vaughan* v. *Bower*, 313 F. Supp. 37, 42 (D. Ariz. 1970), *aff'd*, 400 U.S. 884. Once again, *Shapiro* gives the answer: "Even under traditional equal protection tests a classification of welfare applicants according to whether they have lived in the State for one year would seem irrational and unconstitutional," 394 U.S. at 638; and see as further emphatic illustration that residence is not a basis of "rational relationship" in a public service area, *Cole* v. *Housing Authority of City of Newport*, 435 F.2d 807, 813 (1st Cir. 1970).

## CONCLUSION

The decision of the court below is the last spasm of a dying notion that the health and welfare of American citizens can be conditioned on their residence. Every American has a right to travel freely throughout this country. There can be no seniority system by which a State may discriminate between residents who came early and those who came late.

The decision of the court below should be reversed.

Respectfully submitted,

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July, 1973.

## APPENDIX A

### "HOUSE MEMORIAL NO. 2

### REQUESTING FEDERAL COOPERATION IN CARING FOR THE INDIGENT SICK.

To the Congress of the United States:

Your memorialist respectfully represents:

The therapeutic value of Arizona's pure, healthful air and dry climate, in the treatment of such ailments as arthritis, neuritis, asthma, bronchitis, sinusitis, and tuberculosis, is well known. This fame brings to Arizona many persons seeking health, particularly tuberculars.

Of these visitors an exceedingly large number are in such poor circumstances that if not immediately they soon become charges upon public charity. Since the dust storms of the middle western states have grown to the proportions they have in frequency and severity there has been an exceedingly large influx of destitute sufferers from ailments of the classes above mentioned. It is estimated that of Arizona's indigent sick eighty-six per cent are properly classifiable as transients.

Not to care for these people is of course unthinkable. The commonest dictates of humanity require that they be given medical aid. It is not just, however, that the burden should fall wholly upon Arizona. In some measure the responsibility is national in character.

Wherefore your memorialist, the House of Representatives of the State of Arizona, requests:

1. That the Social Security Act be so amended as to extend its provisions for federal cooperation in the care of needy citizens over the class known as the indigent sick.

Adopted by the House August 2, 1937.

Filed with the Secretary of State August 2, 1937."

Acts, Resolutions and Memorials of the 13th Ariz. Leg., 3d Spec. Sess. (1937).

## APPENDIX B

### State Application of Durational Residency Requirements

We are unaware of any report published either by HEW or otherwise covering the extent to which states presently seek to impose any durational residence requirements on medical care or hospitalization. We, therefore, have sought to compile a report for this Court concerning what requirements are actually being imposed.

We inquired of the hospital association in each state, the District of Columbia and Puerto Rico, "whether there are any residence requirements still being applied in your state or counties as a condition of public payment for indigent medical care." All replied. Where the responses appeared ambiguous, attempts were made to follow up and clarify the answer. These are the results.

| | I. No Durational Residence Requirement | II. Requirements But Not Enforced Because of Federal or State Decisions | III. Requirements But Not Enforced Because of Other State Determinations | IV. Requirements Enforced |
|---|---|---|---|---|
| Alabama | X | | | |
| Alaska | X | | | |
| Arizona | | | | X |
| Arkansas | X | | | |
| California | X | | | |
| Colorado [1] | | | | X |
| Connecticut | | X | | |
| Delaware | | | X | |
| District of Columbia | X | | | |
| Florida [2] | | | | X |

[1] Colorado's Poor Law provides that the counties in Colorado shall maintain and provide medical attendance for all persons chargeable as paupers. To be chargeable as a pauper, a person must reside in Colorado for one year, be self-supporting for one year prior to that, or have resided in Colorado for at least three years immediately preceding his or her becoming so chargeable. Colo. Rev. Stat. Ann. §§ 36-10-1 to -22 ( ).

[2] Florida does not impose a statutory residence requirement. Information received from Florida, however, indicates that a one-year county residence requirement is imposed for programs funded solely from county funds. No requirements are imposed for federal or state programs.

| | I. No Durational Residence Requirement | II. Requirements But Not Enforced Because of Federal or State Decisions | III. Requirements But Not Enforced Because of Other State Determinations | IV. Requirements Enforced |
|---|---|---|---|---|
| Georgia [3] | X | | | |
| Hawaii [4] | X | | | |
| Idaho | X | | | |
| Illinois | | X | | |
| Indiana | X | | | |
| Iowa | | | X | |
| Kansas [5] | X | | | |
| Kentucky | X | | | |
| Louisiana | | X | | |

[3] Georgia Code § 88-2308 (Supp. 1972) imposes a six-month residence requirement for county sponsored indigent hospital care. Information received from Georgia is that this particular program is not in fact operative for anyone, resident or nonresident. There are no restrictions imposed for state or federally funded programs.

[4] Hawaii imposes a three-month requirement for abortions only.

[5] Kansas Stat. Ann. § 39-416 (1972) refers to a county's taxing ability and provides that the county hospital funds shall be used to provide and pay for hospitalization for medically indigent persons who have resided in the *county* for a period of not less than one year immediately preceding any application, and resided in the *state* for not less than two years during the four years immediately preceding any application for hospitalization. Information received from Kansas indicates that these requirements are not being applied.

| | I. No Durational Residence Requirement | II. Requirements But Not Enforced Because of Federal or State Decisions | III. Requirements But Not Enforced Because of Other State Determinations | IV. Requirements Enforced |
|---|---|---|---|---|
| Maine | X | | | |
| Maryland | X | | | |
| Massachusetts | X | | | |
| Michigan | | X | | |
| Minnesota | X | | | |
| Mississippi [6] | | | | X |
| Missouri | | X | | |
| Montana | X | | | |
| Nebraska [7] | | | | X |
| Nevada | X | | | |
| New Hampshire | X | | | |
| New Jersey | X | | | |
| New Mexico | X | | | |
| New York | | X | | |
| North Carolina | X | | | |
| North Dakota | X | | | |

[6] Mississippi Code Ann. § 43-31-19 (1972) requires a six-month residence requirement.

[7] Nebraska Rev. Stat. § 68-115 (Supp. 1972) requires continuous settlement within the county for one year prior to the application. The statute also provides that if the applicant has the one-year continuous residence within the state, he needs only to reside within the county for six months.

| | I. No Durational Residence Requirement | II. Requirements But Not Enforced Because of Federal or State Decisions | III. Requirements But Not Enforced Because of Other State Determinations | IV. Requirements Enforced |
|---|---|---|---|---|
| Ohio [8] | | | X | |
| Oklahoma | | X | | |
| Oregon | X | | | |
| Pennsylvania | | X | | |
| Puerto Rico | X | | | |
| Rhode Island | | X | | |
| South Carolina | X | | | |
| South Dakota | X | | | |
| Tennessee | X | | | |
| Texas [9] | | X | | |
| Utah | X | | | |
| Vermont | X | | | |
| Virginia | X | | | |
| Washington | X | | | |
| West Virginia | X | | | |
| Wisconsin | X | | | |
| Wyoming | X | | | |
| | 34 | 10 | 3 | 5 |

[8] Although four sections of the Ohio Code impose residence requirements (Ohio Rev. Code Ann. §§ 5105.05 (B), 5106.2(C), 5107.03(D), 5151.02(B)), information from Ohio indicates that the Ohio Department of Welfare is simply not enforcing these requirements.

[9] All Texas hospital district statutes have residency requirements. However, these requirements were held invalid in an unreported 1970-71 decision by Judge Sarah Hughes, Federal District Court in Dallas. Information received from Texas is that there requirements are not being enforced because of that decision.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

*Appellants,*

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

*Appellees.*

On Appeal from the Supreme Court of the State of Arizona

## BRIEF ON THE MERITS OF *AMICUS CURIAE*, LEGAL AID SOCIETY OF MARICOPA COUNTY, STATE OF ARIZONA

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1972

NO. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

*Appellants,*

v.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors,

*Appellees.*

On Appeal from the Supreme Court of the State of Arizona

## BRIEF ON THE MERITS OF *AMICUS CURIAE*, LEGAL AID SOCIETY OF MARICOPA COUNTY, STATE OF ARIZONA

### INTEREST OF AMICUS

Amicus, Maricopa County Legal Aid Society, is a non-profit corporation whose attorneys provide legal services

IN THE

# Supreme Court of the United States

October Term, 1972

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NO. 72-947

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MEMORIAL HOSPITAL, HENRY EVANS, et al.,

Appellants,

v.

MARICOPA COUNTY and HENRY EL EVANS, S. M. DUNN and J. ROBERT STARK, Supervisors,

Appellees.

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On Appeal from the Supreme Court of the State of Arizona

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BRIEF ON THE MERITS OF AMICUS CURIAE, LEGAL AID SOCIETY OF MARICOPA COUNTY STATE OF ARIZONA

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## INTEREST OF AMICUS

Amicus, Maricopa County Legal Aid Society, is a non-profit corporation whose attorneys provide legal services

for indigent persons in Maricopa County, State of Arizona. It is also a delegate agency of the Office of Economic Opportunity, Legal Services Division, under the Federal Economic Opportunity Act.

Amicus is vitally interested in the one year durational residence requirement for indigent medical care at the Maricopa County Hospital because many of the clients represented by its staff attorneys are adversely affected by the Statute. The Arizona Supreme Court decision in *Maricopa County v. Superior Court, County of Maricopa*, 108 Ariz. 373, 498 P.2d 461 (1972) seriously affects the Society's clientele. Many of our clients are permanent-less than twelve month residents of Maricopa County, State of Arizona and are therefore unable to use the Maricopa County Hospital unless and until any adverse medical condition they suffer becomes emergent. This is a Statute that

causes and encourages poverty and can turn a self-sufficient individual into a welfare recipient.

The Amicus supports the position of Appellants which seeks the reversal of the Arizona Supreme Court decision in the above-entitled case.

Amicus has received the written consent of all of the parties in the above-entitled case to file a brief on the merits. Amicus requests this Court enter any appropriate order in this regard.

## SUMMARY OF ARGUMENT

Statistics show that there is a large migration of interstate travelers to Arizona, who have the intention to settle and abide permanently in this State. Their right to travel is clearly impinged by a one year durational residence law which denies to them medical care for such

## SUMMARY OF ARGUMENT

Statistics show that there is a large migration of interstate travelers to Arizona, who have the intention to settle and abide permanently in this State. Their right to travel is clearly implied by a one year durational residence law which denies to them medical care for such

illnesses as heart, kidney and cancer diseases.

The alleged distinction between interstate as compared with intrastate travel, because of the county durational residence law, is not significant in the determination of the present case. This Court in *Dunn v. Blumstein*, 405 U.S. 330, 92 S. Ct. 995, 31 L. Ed. 2d 274 (1972) was confronted with a county durational residence statute and ruled said law unconstitutional.

Amicus has attempted to demonstrate that the fiscal integrity argument of the Appellees is "over extended". In fact, the one year durational residence requirement would seem to increase the cost of indigent medical care to the Appellees. In addition, there are other means of financing medical care such as state-wide funding and/or participation in the Federal Medicaid program. Finally, Amicus

contends that there is a substantial difference between the university tuition-durational residence situation and the present case of medical care. Amicus points out that the Arizona Welfare Department has established a list of criteria to determine residence and the Arizona Legislature in 1965 enacted a Medical Assistance for Aged law, which contained only a residency requirement.

In conclusion, Amicus submits that this country was built and its people prospered by a mobile population and that the one year durational residence law for medical care clearly impinges on that mobility. Therefore, the present law is unconstitutional and the judgment of the Court below should be reversed.

## ARGUMENT

### I THE ONE YEAR DURATIONAL RESIDENCE REQUIREMENT FOR MEDICAL CARE, WHICH IS A FUNDAMENTAL NECESSITY OF LIFE, PENALIZES THE RIGHT TO TRAVEL

Justice Stewart in *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600 (1969) commented on the one year durational residence law for welfare benefits by stating:

> "And it further follows, as the Court says, that any other purposes offered in support of a law that so clearly impinges upon the constitutional right of interstate travel must be shown to reflect a *compelling* government interest." *Shapiro, supra* at 394 U.S. 643-644.

*Accord: San Antonio Independent School District et al. v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L. Ed. 2d 16 (1973). Along the same lines, the majority stated in *Shapiro*:

> "and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a

compelling governmental interest, is unconstitutional." *Shapiro, supra* at 394 U.S. 634

Several Justices of the Supreme Court have implied that a one year durational residence requirement *per se* constitutes a penalty on the right to travel. *Dunn v. Blumstein*, 405 U.S. 330, 342 and fn. 12, 92 S. Ct. 995, 1003 and fn. 12, and 31 L. Ed. 2d 274, 284 and fn. 12 (1972) and *Vlandis v. Kline*, 41 L.W. 4796, 4801 (June 11, 1973). However, there has not been a full consideration of this view of a durational residence requirement by this Court nor does Amicus contend in the present case that the one year durational residence law for medical care *per se* penalizes the right to travel.

Most of the lower court decisions have analyzed the cases dealing with durational residence laws in terms of whether the benefit denied by the imposition of a one year durational residence

requirement deters[1] the right to travel.

The deterrence analysis usually has looked at the purpose for which the durational residence law was enacted and/or the effect of said law on the right to travel. This two pronged approach had its genesis in the statements in *Shapiro, supra*, where the Court stated:

> "There is weighty evidence that exclusion from the jurisdiction of the poor who need or may need relief was the specific

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[1] In *Cole v. Housing Authority of the City of Newport*, 435 F.2d 807 (1st Cir. 1970), the Court rejected the deterrence approach to the durational residence situations. *Cole, supra* at pg. 810 and fn. 8 and 9. Instead, the *Cole* Court relied on a definition of travel to include only the "migration with intent to settle and abide" to invalidate a durational residence law. *Cole, supra* at 811. It will be the position of Amicus in the present case that the one year durational residence requirement for medical care under either analysis clearly impinges on the right to travel.

objective of these provisions. . . .[2]

. . . An indigent who desires to migrate, resettle, find a new job, and start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute."[3] *Shapiro, supra* at 394 U.S. 628-629. (footnotes added)

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[2]The *Shapiro* opinion also noted that one of the lower courts had indicated "that if the purpose of the statute was 'to erect a barrier against the movement of indigent persons into the State or to effect their prompt departure after they have gotten there' it would be 'patently improper and its implementation plainly impermissible'." *Shapiro, supra* at 394 U.S. 626-627.

[3]Of course, the Supreme Court indicated in *Dunn v. Blumstein, supra*, that the sole emphasis on deterrence in analyzing the extent of *Shapiro* was misplaced. This Court stated in *Dunn*: "the majority found no need to dispute the 'evidence that few welfare recipients have in fact been deterred [from moving] by residence requirements'. *Id.*, at 650 (Warren, C.J., dissenting); see also *id.*, at 671-672 (Harlan, J., dissenting). Indeed, none of the litigants had themselves been deterred." *Dunn, supra* at 405 U.S. at 340.

While many courts have struck down durational residence laws in relation to various types of benefits based on *Shapiro* and other courts have upheld such laws, the brief of Amicus will focus on cases which have dealt with durational residence laws which denied benefits relating to education and health needs.

This Court is well aware that in *Starns v. Malkerson*, 326 F. Supp. 234 (D. Minn. 1970), *aff'd* 401 U.S. 985 (1971), the Supreme Court affirmed a District Court decision which had upheld a one year durational residence requirement for university tuition.[4]

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[4]The *Starns* decision, as well as the decision in *Kirk v. Board of Regents of Univ. of California*, 273 Cal. App. 2d 430, 78 Cal. Rptr. 260 (1969), *appeal dismissed*, 396 U.S. 554 (1970), had distinguished the durational residence-tuition situation from the durational residence-welfare case by stating: "While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. (Cont'd to pg. 11)

This Court's explanation in *Vlandis, supra,* of its summary affirmance of the *Starns* case did not indicate whether the one year durational residence Statute was constitutional because it did not clearly impinge on the right to travel[5] or whether the state had met the compelling interest test because:

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*Shapiro* involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning do not involve similar risks. Nor was petitioner (unlike the families in *Shapiro*) precluded from the benefit of obtaining higher education. Charging higher tuition fees to nonresident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents." *Starns, supra* at 238.

[5]In Note, *Non Resident Tuition,* 55 Minn. L. Rev. 1139, 1149-1150 (1971), the author commented: "However, the right to travel has not yet been extended so far

(Cont'd to pg. 12)

"of the special problems involved in determining the bona fide residence of college students who come from out of State to attend that State's public university." *Vlandis, supra* at 41 L.W. 4799.

Several cases have dealt with one year durational residence requirements for medical care. All of the courts except the Arizona Supreme Court in the present case have ruled that such laws are unconstitutional. See *Board of Supervisors, Pima County v. Robinson,*

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as to protect against the type of infringement which nonresident tuition creates. Nonresident tuition deters students who wish to travel to another state for a time (e.g. four years) but who do not wish to change residence from their original home state. In its broadest extension to date, the right to travel interstate has been used to protect the right of persons to government benefits in the states to which they migrate, that is, in the states in which they take up residence. Before nonresident tuition could be struck down, the right to travel would have to be extended one step further to protect the rights of persons to government benefits in any state to which the person travels. See also *Cole, supra* at pg. 811.

10 Ariz. App. 238, 457 P.2d 951 (1969), *vacated as moot*, 105 Ariz. 280, 463 P.2d 536 (1970); *Crapps v. Duval County Hospital*, 314 F. Supp. 181 (M.D. Fla. 1970); *Arnold v. Halifax Hosp. Dist.*, 314 F. Supp. 277 (M.D. Fla. 1970); and *Valenciano v. Bateman*, 323 F. Supp. 600 (D. Ariz. 1971).

In *Vaughan v. Bower*, 313 F. Supp. 37 (D. Ariz. 1970), *aff'd mem.*, 400 U.S. 884 (1970), this Court affirmed an Arizona District Court decision which had held that the Arizona one year durational residence law for commitment to a state mental hospital was unconstitutional. The District Court opinion discussed the *Kirk* case, *supra*, and the *Board of Supervisors, Pima County* decision, *supra*, as follows:

> "In the two cases to date to consider the ramifications of *Shapiro* in a non-welfare contest, consistent results have been reached on the basis of the essential nature of the public benefit involved. An

intermediate appellate court in California has held that the reasoning of *Shapiro* does not render invalid California's one year residence requirement for receipt of free tuition benefits at a state university. *Kirk v. Board of Regents*, Cal. App., 78 Cal. Rptr. 260 (1969), appeal dismissed, 396 U.S. 554, 90 S. Ct. 754, 24 L. Ed. 2d 747. The thrust of the *Kirk* holding is that *Shapiro* involved benefits essential to the 'preservation of life and health' which necessarily have a close functional relationship with the right to travel. Since free education did not constitute such a fundamental aspect of basic survival and subsistence, its denial would not be a consideration of sufficient magnitude as to discourage or prohibit interstate travel.

In *Board of Supervisors, Pima County v. Robinson*, 10 Ariz. App. 238, 457 P.2d 951 (1969), *vacated as moot*, 105 Ariz. 280, 463 P.2d 536 (1970), the Arizona Court of Appeals held unconstitutional in light of *Shapiro* a statutory requirement that in order to be eligible for non-emergency public hospitalization, medical care, or out-patient relief an indigent must have been a resident of that county for the preceding twelve months. The implication is that basic non-emergency medical care and

treatment are 'necessities of life' within the meaning of *Shapiro*.

The case herein falls somewhere between *Shapiro* and *Robinson* on the one hand and *Kirk* on the other." *Vaughan, supra* at 41-42.

Turning to the specific Statute in the present case, A.R.S. § 11-297,[6] the legislative history in regard to the Statute is rather vague.

During the 1930's, Arizona allegedly became a center for indigent persons fleeing from the dust-stormed midwest because of respiratory illnesses.[7]

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[6]See Laws 1937, 3rd Spec. Sess., Ch. 4 § 4.

[7]At the same time the original A.R.S. § 11-297 was passed, the Arizona House adopted House Memorial No. 2, which was introduced by Mr. Petersen, a representative of Maricopa County. (see Journal of the House, Thirteenth Legislature of the State of Arizona 1937, Third Special Session, pg. 284.) The Memorial read as follows:
(Cont'd to pg. 16)

"To the Congress of the United States: Your memorialist respectfully represents:

The therapeutic value of Arizona's pure, healthful air and dry climate, in the treatment of such ailments as arthritis, neuritis, asthma, bronchitis, sinusitis, and tuberculosis, is well known. This fame brings to Arizona many persons seeking health, particularly tuberculars.

Of these visitors an exceedingly large number are in such poor circumstances that if not immediately they soon become charges upon public charity. Since the dust storms of the middle western states have grown to the proportions they have in frequency and severity there has been an exceedingly large influx of destitute sufferers from ailments of the classes above mentioned. It is estimated that of Arizona's indigent sick eighty-six per cent are properly classifiable as transients.

Not to care for these people is of course unthinkable. The commonest dictates of humanity require that they be given medical aid. It is not just, however, that the burden should fall wholly upon Arizona. In some measure the responsibility is national in character.

(Cont'd to pg. 17)

There was increasing pressure from the rural counties to require Maricopa County to take up the full burden of indigent medical care.[8]

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> Wherefore your memorialist, the House of Representatives of the State of Arizona, requests:
>
> 1. That the Social Security Act be so amended as to extend its provisions for federal co-operation in the care of the needy citizens over the class known as the indigent sick."
>
> Adopted by the House August 2, 1937.
>
> Filed with the Secretary of State August 2, 1937.

1937 Session Laws Arizona, Thirteenth Legislature, Third Special Session, pgs. 284-285.

It should be noted that a residency requirement would have met the concern of the Arizona House of Representatives. In *Board of Supervisors, Pima County, supra* at 457 P.2d. 953, this possibility was left open. See also, *Cole, supra* at 811.

[8]The counties in Arizona were responsible for expenditures to take care (Cont'd to pg. 18)

This can be seen by the comments of several representatives of Maricopa County, who voted against the original A.R.S. § 11-297. A typical comment was as follows:

> "Mr. Speaker:
>
> In voting 'no' on this bill I wish to state that I am not influenced by the administration as I do not know, nor have I been told by any administration representative, the wishes of the governor.

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of the indigent sick until 1932. See § 975, R.S. 1901; § 2420, R.S. 1913, and § 776, R.C. 1928. In 1933, the Arizona Legislature created the State Board of Public Welfare. One of the duties of the Board was: "W. To aid and cooperate with the several county board of supervisors in the care and maintenance of the indigent sick and dependent poor, either directly or through the agency of the County Board of Public Welfare and to make necessary expenditures therefor. . . ." Chapter 35, Session Law 1933, pg. 38. In addition, prior to the enactment of the original A.R.S. § 11-297 (see Laws 1937, 3rd Spec. Sess., Ch. 4 ¶ 4), Arizona did not have a residency nor a durational residence requirement. See § 1033, R.S. 1901; § 2486, R.S. 1913, §814, R.C. 1928.

> Maricopa County voted $8,500,00.00 to build her highways without state aid. We pay a large percentage of the gasoline tax which has been, and still is being diverted to the building of highways for other counties.
>
> The care of indigent sick is a charge of the whole commonwealth and unless the state is to assist in this burden, I will be obliged to vote 'no'.
>
> W. W. Mitchell"

Journal of the House, Thirteenth Legislature of the State of Arizona 1937, Third Special Session, pg. 263.[9] In any event, on August 4, 1937, the original A.R.S. § 11-297 was signed by the Governor of Arizona and was enacted into law.[10]

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[9]From the legislative history, it is clear that the original A.R.S. § 11-297 was not passed primarily to turn over the planning of indigent health care to the local governments.

[10]The original A.R.S. § 11-297 (see Laws 1937, 3rd Spec. Session, Ch. 4 § 4) contained a provision which stated "except where treatment is given in the state

(Cont'd to pg. 20)

Earlier in the same year: namely on March 22, 1937, the Arizona Legislature enacted a law to Aid Families with Dependent Children. The Statute had the type of one year durational residence requirement which was struck down in *Shapiro, supra*. See 1937 Session Laws Arizona, Thirteenth Legislature, pg. 343.[11]

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welfare sanitarium, the affidavit shall state that he has been a resident of the State of Arizona for the preceding twelve months". This provision was deleted and now is covered by A.R.S. § 36-261 which contains no residency requirement. An opinion by the Attorney General of Arizona, Op. Atty. Gen. No. 59-21, indicated that a one year durational residence requirement could be imposed. However, the State Tuberculosis Sanitarium does not impose such a requirement.

[11]In 1972, the Arizona Legislature amended A.R.S. § 46-292 and legislatively eliminated the one year durational residence requirement. However, A.R.S. § 46-292(1)(Amended 1972) still reads: "Who has established residence in Arizona at the time of application."

At the very minimum, the original A.R.S. § 11-297 was adopted during a time when durational residence requirements were being enacted to prevent people from migrating from one state to another.[12 & 13]

What cannot be denied is the fact that, today, large numbers of people, who travel to Arizona from outside the State with the intention to settle and abide permanently in Arizona, are penalized by

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[12]In *Vaughan*, *supra* at 313 F. Supp. 42 fn. 3, the Court said: "In absence of any enlightening legislative history, this Court remains mindful of the Supreme Court's observation in *Shapiro* that there is 'weighty evidence' that exclusion of the poor is frequently the specific objective of a residence requirement in the welfare area. 394 U.S. at 628, 89 S. Ct. 1322."

[13]A discussion concerning Arizona's need for a residency requirement for non emergency medical care in contrast to a durational residence requirement for university tuition will be found on pages 48-50, *infra*.

the one year durational residence requirement for medical care.

Statistics, gathered over a number of years by the Arizona Republic, a Phoenix newspaper, and published in "73 Inside Phoenix", show that the migration of permanent newcomers far exceeds the less than year round arrivals. (See Appendix "A" attached to this Brief.)[14] In the 1930's travelers allegedly came to Arizona primarily for their health. The attached Appendix "B" is taken from the "Inside Phoenix" publications for the years of 1966 to 1972. The Appendix indicates that people move to Arizona for various reasons. Health seems to be of decreasing importance in the migration of

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[14]According to the analysis employed in *Cole, supra* at 811, Arizona's one year durational residence law would impinge on the right to travel.

interstate travelers to Arizona.[15]

Finally there is the question of whether the denial of medical care is a 'necessity of life' and therefore would clearly impinge on the right to travel.[16] In the end one has to consider the types of medical problems which people are

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[15]The Phoenix Republic on April 7, 1973 on pg. 6 editorialized as follows: "Arizona no longer is the tuberculosis State, a dubious distinction it held from 1912, the year of its admission to the Union, until 1959 when Alaska became a state and took the TB lead.

"According to statistics from the State Department of Health, Arizona's TB rank dropped from fifth in 1971 to 11th last year."

[16]President Nixon has stated that health is more important than wealth. In *Health, Message From the President of the United States*, 92nd Congress, 1st Session, House Document No. 92-49 (1971) at pg. 18, President Nixon stated: "'It is health which is real wealth,' said Gandhi, 'and not pieces of gold and silver'. That statement applies not only to the lives of men but also to the life of nations. And nations, like men, are judged in the end by the things they hold most valuable."

forced to bear without medical treatment. In *Board of Supervisors, Pima County, supra* at 457 P.2d 952, it was a man who was severely injured in a fire. In *Valenciano, supra*, one of the Plaintiffs, Bertha Valenciano, was denied medical care for the birth of her baby.[17] Another Plaintiff, Eula Knapp, was denied treatment for fainting spells and epilepsy. The other Plaintiff in *Valenciano*, George Knapp, was a diabetic and was denied insulin treatment. See Appendix "C", which was part of Plaintiffs' Complaint filed in the *Valenciano* case and also see *Valenciano, supra* at 601-602. In the present

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[17]In Maricopa County, an indigent pregnant woman can receive emergency medical treatment to give birth to her baby once she goes into labor. Until approximately a year and a half ago, an indigent pregnant woman was denied both emergency and non emergency medical care in giving birth to her baby.

case, Mr. Evaro suffered an acute attack because of his chronic asthmatic and bronchial illness. However, Mr. Evaro could not obtain from the County Hospital the "required continued medical care for the preservation of his health and well being". *Maricopa County v. Superior Court, County of Maricopa*, 108 Ariz. 373, 374, 498 P.2d 461, 462 (1972)

Other illnesses, which are not being treated due to the durational residence requirement, include heart, kidney and cancer diseases.[18]

In the end, it seems beyond dispute

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[18]Amicus interviewed a young woman, who was refused admittance at the County Hospital, because of the durational requirement. The woman had had a "pap smear" which had proved to be positive. However, the woman did not want to go through the rigors of a lawsuit and sought other means of handling her medical problem. However, there are many people who do not have the knowledge nor the stamina of being able to find alternative means of medical care.

that if the denial of public benefits, "upon which may depend the ability of families to obtain the very means to subsist--food, shelter, and other necessities of life," clearly impinges on the right to travel, then the same holds true for the denial of medical care.

## II THE COUNTY DURATIONAL RESIDENCE REQUIREMENT FOR MEDICAL CARE PENALIZES THE RIGHT TO TRAVEL

In the Appellees' Motion To Affirm before this Court, it was stated:

> "Intrastate travel differs from interstate. Numerous cases, including *Shapiro*, imply that the commerce clause is the fountainhead of the constitutional right to travel.[19] As *Shapiro*

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[19]The *Shapiro* opinion stated: "We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision." *Shapiro, supra* at 394 U.S. 630 and fn. 8. See also Justice Stewart's concurring opinion in *Oregon v. Mitchell*, 400 U.S. 112, 285-287, 91 S. Ct. 260, 345-346, 27 L. Ed. 2d 272, 374-375 (1970), where (Cont'd to pg. 27)

itself recognizes, this right stems from 'the nature of our federal union.' The right to travel basically thus reflects the right of the citizens of the several states to travel beyond state borders to the national capitol in Washington, D.C. to redress their grievances.[20] Accordingly, the constitutional right to travel fundamentally views interstate travel within the federal union, rather than intrastate travel within the

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Justice Stewart attributed the source of the right to travel to the Privileges and Immunities Clause of the Fourteenth Amendment.

[20]See Mr Douglas' concurring opinion in *Edwards v. California*, 314 U.S. 160, 178-181, 62 S. Ct. 164, 169-170, 86 L. Ed. 119, 127-129 (1941) where he rejected the argument that the rationale for the right to travel lies in a citizen being able to travel "to the seat of his national government or its offices throughout the country." Even assuming *arguendo* that the rationale for the right to travel was "to travel to the seat of his national government or its offices throughout the country," it is obvious that the Federal Government has offices throughout the State of Arizona and therefore there is the need for the constitutional right to travel within the State.

counties of one state." Appellees' Motion To Affirm at pg. 6. (footnotes added).[21]

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[21]This part of Appellees' Motion concludes by stating: "Furthermore, the fact that the monies involved in the instant case are not federal but rather county-raised suggest that the 'federal' right to travel is not so directly motivated by a desire to reap the benefits of federally-funded and federally-administered programs supported by the nation at large." Motion To Affirm at pg. 6. Of course, this Court stated in *Pease v. Hansen*, 404 U.S. 70, 92 S. Ct. 318, 30 L. Ed. 2d 224 (1971): "Whether a welfare program is or is not federally funded is irrelevant to the constitutional principles enunciated in *Shapiro v. Thompson*, 394 U.S. 618, 89 S. Ct. 1322, 22 L. Ed. 2d 600." It also should be noted that the Maricopa County General Hospital has received the following Hill-Burton monies: 1948-$157, 339; 1952-$100,000; 1960-$69,722; 1966-$716,047; and 1968-$1,158,147. See *Hill-Burton Project Register, July 1, 1947-June 30, 1971*, U.S. Department of Health, Education and Welfare, DHEW Publication No. (HSM) 72-4011, pg. 37. Finally, in Kris, *Durational Residency Requirements and the Mass Migration Theory: Getting To The Heart Of The Current Welfare Dilemma*, Wm & Mary L. Rev. 472, 505 (Vol 2 1969-70), Mr. Kris commented: "Attempts to warrant the imposition of residency requirements cannot be justified on the grounds of any mass migration theory. Statistics in this study reveal that no mass migration of welfare seeking indigents has occurred, nor is

Several lower courts have considered the question of whether the constitutional right to travel includes intrastate as well as interstate travel. Most of the cases have arisen because the plaintiff in the particular case was a resident of the state but had been denied some benefits because of a local durational residence requirement. Most of these courts found that there was no distinction between the constitutional right to travel from without the state as opposed to within the state. See *King v. New Rochelle Municipal Housing Authority*, 442 F.2d 646, 648-649 (2nd Cir. 1971), *cert. denied* 404 U.S.

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expected to occur in those states affected by the Court's decision. Those participating states which expect an initial jump of case loads additions, also predict that the increase will reach a constant level in the future. The evidence presented tends to prove that lower income groups will change residence for various reasons and not solely to seek higher assistance benefits."

863 (1971); *Wellford v. Battaglia*, 343 F. Supp. 143, 147 (D. Del. 1972); *Krzewinski v. Kugler*, 338 F. Supp. 492, 498 (D. N.J. 1972); *Cole, supra* at 809 and 811; *Eggert v. City of Seattle*, 505 P.2d 801, 804 (1973) and *Donnelly v. City of Manchester*, 274 A.2d 789, 791 (1971).

In *Hadnott v. Amos*, 320 F. Supp. 107 (M.D. Ala. 1970), *aff'd* 401 U.S. 968 (1971), this Court affirmed a District Court decision in which the lower Court had ruled unconstitutional a one year county and three month precinct durational residence requirements for voters. See *Hadnott, supra* at 320 F. Supp. 114.[22] One of the Plaintiffs, Drake, had "lived

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[22]"Amendment 207 to the Alabama Constitution and Tit. 17, § 12, Code of Alabama, limit the franchise to those who 'shall have resided in the state at least one year, in the county one year, and in the precinct or ward three months, immediately preceding the election at which he offers to vote, and who shall have been duly registered as an elector'." *Hadnott, supra* at 320 F. Supp. 112.

nearly all his life in Alabama" (*Hadnott, supra* at 114) and had "met the state residency requirements." *Hadnott, supra* at 112.

At another part of the Appellees' Motion To Affirm, it is stated:

> "Therefore, it [A.R.S. § 11-297] makes no distinction between people who have moved from points within the State and people who have moved from points without the State and it applies in like manner to new and old residents of the State who have not completed one year's residence within a particular subdivision." Appellees' Motion To Affirm at pg. 3. (Parenthesis added).

The present case involves a Plaintiff, Mr. Evaro, who was an interstate traveler and is comparable to the Plaintiff in *Dunn, supra*. This Court had no difficulty in *Dunn* in striking down a county durational residence requirement. It is obvious in the present case, as it was in *Dunn, supra*, that the county durational

residence requirement creates a classification between those newly arrived (interstate) bona fide residents of the county and those older residents of the county.[23]

In addition, as Justice Stewart has stated in *San Antonio Independent School District, supra*:

> "Moreover, quite apart from the Equal Protection Clause, a state law that impinges upon a substantive right or liberty created or conferred by the Constitution is of course, presumptively invalid, whether or not the law's purpose or effect is to create any classification." *San Antonio Independent School District*, 41 L.W. 4407, 4425.

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[23]This penalty on the right to travel differs from the illustration of a non-penalty given in *Dunn, supra* at 405 U.S. 342, fn. 12 where the Court said: "Where for example, an interstate migrant loses his driver's license because the new State has a higher age requirement, a different constitutional question is presented. For in such a case, the new State's age requirement is not a penalty imposed solely because the newcomer is a new resident, instead, *all residents*, old and new, must be of a prescribed age to drive." (emphasis added).

As has been stated earlier, the one year county durational residence requirement for medical care clearly impinges on the right to travel of many interstate movers, who have migrated to Arizona with the intent permanently to settle and abide. (see Appendices "A" and "B").

## III A COMPELLING STATE INTEREST IS NOT ESTABLISHED BY THE MERE SHOWING THAT FISCAL OR ADMINISTRATIVE INTERESTS ARE FURTHERED BY A DURATIONAL RESIDENCE REQUIREMENT

### A. FISCAL CONSIDERATIONS IN THE PRESENT CASE DO NOT PRESENT A COMPELLING INTEREST

As early as 1969, the Board of Supervisors of Maricopa County was asserting that the elimination of the durational residence law for medical care would increase the costs to the County. In *Board of Supervisors, Pima County, supra*, the Court stated:

"The Amicus Curiae[24] brief presents data which shows that there will be a two percent increase in cost due to an affirmance. The trial judge in his findings of law held fiscal expediency an invalid purpose in any event. We agree." *Board of Supervisors, Pima County, supra* at 457 P.2d 952-953 (footnote added).

In the present case, Maricopa County estimates that the elimination of the one year durational residence requirement will mean an increase of expenditures of approximately $2,500,000 (see A-17). This additional cost allegedly would mean increasing the ad valorem property tax by 8.45%. (see A-21).[25]

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[24] The Amicus Curiae in the *Board of Supervisors, Pima County* case, *supra*, was the County of Maricopa represented by William Carter. *Board of Supervisors, Pima County, supra* at 457 P.2d 951.

[25] Mr. G. W. Bickel, PhD. of the Legal Action Support Project, Bureau of Social Science Research, located at 1990 'M' Street, N.W., Washington, D.C., analyzed the affidavits presented by the Appellees in the present case. He stated:

"The figures presented by Maricopa County as estimates of the increased hospital, clinic and nursing-home utilization

which could be expected to occur if the one-year residence requirement for indigents were eliminated are curious indeed. While these figures purport to measure, and are presented as measuring, the increased *demand* for hospital, clinic and nursing-home services that would result, they are (in the case of hospital and clinic) rather the County's estimates of the optimum feasible *capacity* of these facilities, or in other words, of the maximum *supply* of such services that could be provided within existing facilities.

Now nowhere is it explained why an estimate of *supply* capacity should be taken as a reasonable representation of an increased *demand* for such services. Presumably the County Officials are contending (implicitly here) that in the absence of the residence requirement demand for medical services by indigent newcomers to Maricopa County would simply be indefinitely expandable: that is, would swell to whatever level the capacity of the facilities permits, or indeed would be even higher than that level and should be restricted, by some other means, to the capacity of the existing facilities.

Be that as it may, *no actual estimates* whatsoever are given by the County, or even attempted, as to what the expected increase in *demand as such* for hospital and clinic services would be among the indigent newcomer population of Maricopa County.

With regard to the estimated increase in demand for nursing home care, here the County provides *absolutely no rationale whatsoever* for the figures it presents. The increased demand estimates are simply asserted, with no attempt made to provide factual or logical substantiation, but solely attributed to 'discussions with our personnel' and other unnamed 'representatives' of various

(Cont'd to pg. 36)

(Cont'd to pg. 35)

Even assuming th[illegible]at the figures pre-

sented by the Appelle[illegible]es are reasonable,

Maricopa County in re[illegible]cent years has adopted

increased budgets for [illegible] the Maricopa General

Hospital, which are c[illegible]omparable to the al-

leged projected increa[illegible]ase.[26]

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State and County agenc[illegible]cies.

G. W. Bickel, PhD
Bureau of Social Science
Research, Inc."

Moreover, the Legal Ac[illegible]ction Support Pro-

ject, using the Unite[illegible]d States Census

data and also the data[illegible]a reported in the

"Inside Phoenix" publi[illegible]ications, developed

two estimates as to th[illegible]he cost to Maricopa

County if the duration[illegible]nal residence re-

quirement were abolish[illegible]hed. Based on pop-

ulation figures from 1[illegible]1969-1971, the

Project calculated it [illegible]would cost the

County approximately $[illegible]$899,000. If the

population figures wer[illegible]re for 1971 only,

then the additional co[illegible]ost to the County

would be approximately [illegible]y $1,058,450.

[26]The following ar[illegible]re the adopted bud-

gets for the Maricopa [illegible]County General

Hospital: 1970-71 / $[illegible]$12,184,000; 1971-

72 / $15,955,446; 1972[illegible]2-73 / $21,206,047.

See Board of Superviso[illegible]ors, *Annual Budget*

for the years 1970-71[illegible]; 1971-72; 1972-73.

According to Mr. Willi[illegible]iam J. Feldmeier,

Project Director for t[illegible]the Board of Super-

visors of Maricopa Cou[illegible]unty, the estimated

budget for the County [illegible]Hospital for 1973-

74 is $23,250,000.

Indeed, it seems ironic that the most populous and wealthiest County in the State of Arizona should be the most vociferous in its opposition to the elimination of the durational residence requirement.[27 & 28] In the end, the Appellees' opposition seems self-defeating for most authorities agree that the postponement in treatment of illness increases

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[27] See pages 18-19, *supra*.

[28] Due to the *Board of Supervisors, Pima County* decision, *supra*, the Pima County General Hospital was not using the durational residence requirement from August 1969 until September 1972. In addition, the Pinal County Hospital has not been employing the durational residence test since March 1971. See *Valenciano, supra*. The differences between Pinal County and Maricopa County are substantial in regard to the resources available to meet their indigent medical care obligations when one considers that (1) Pinal County has approximately 35% of its population earning less than $6,000 as compared to 24% for Maricopa County, and (2) only 31% of Pinal's population earns over $10,000 as compared to 49% for Maricopa County. See Valley National Bank, *Arizona Statistical Review*, 28th Annual Edition (September 1972) pg. 6.

Indeed, it seems ironic that the
most populous and wealthy county in
the State of Arizona should be the most
restrictive on the opportunities to the minor-
ity portion of the county residence re-
gardless of [illegible] It is the duty of the Appel-
late Courts to review self-interesting the
most arbitrary laws that the majority
can threaten of this as interpre-

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[illegible] See pages 18-19, supra.

[illegible] to the Board of Supervisors,
County Assessor, supra, the final
County Canvass Report was not using
the additional residence requirement from
August 1972 until September 1972. In
addition, the Pima County Hospital has
not been employing the durational resi-
dence test since March 1972. See [illegible]
[illegible] The differences between
Pima County and Maricopa County are
noteworthy in the resources
available to meet their indigent medical
care obligations. One could consider that
(1) Pima County has approximately 75%
of its population residing less than
50,000 as compared to 44% for Maricopa
County, and (2) only 31% of Pima's
population owns over $10,000 as com-
pared to 49% for Maricopa County. See
Valley National Bank, Arizona Statistical
Review, 25th Annual Edition (September
1972) pp. 6.

its cost.[29] Additionally, statistics compiled by the United States Department of Health, Education and Welfare reveal that members of low income groups are in poorer health than persons with higher incomes. Due to such factors as the quality of housing, nutrition and occupations, indigents are more likely to fall prey to sickness. See *Health Characteristics of Low-Income Persons*, U.S.

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[29]As President Nixon stated: "In most cases our present medical system operates episodically -- people come to it in moments of distress -- when they require its most expensive services. Yet both the system and those it serves would be better off if less expensive services could be delivered on a more regular basis.

If more of our resources were invested in preventing sickness and accidents, fewer would have to be spent on costly cures. If we gave more attention to treating illness in its early stages, then we would be less troubled by acute disease. In short, we should build a true 'health' system and not a 'sickness' system alone. We should work to maintain health and not merely restore it." *Health, supra* at pg. 3.

Department of Health, Education and Welfare, DHEW Publication No. (HSM) 73-1500 (July, 1972).[30]

Turning to the legal problems involved in the Appellees' fiscal argument, this Court has stated:

> "In pursuing that important interest, the State cannot choose means which unnecessarily burden or restrict constitutionally protected activity. Statutes affecting constitutional rights must be drawn with 'precision,' *NAACP v. Button*, 371 U.S. 415, 438 (1963); *United States v. Robel*, 389 U.S. 258, 265 (1967), and must be 'tailored' to serve their legitimate objectives. *Shapiro v. Thompson*, *supra*, at 631. And if there are other, reasonable ways to achieve those goals with a lesser burden

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[30]See O'Rourke, M.D., M.P.H. *Arizona Health Services, A Consultant's Report To The Joint Select Committee on Health Services*, January 17, 1973. The Report stated at page 50: "The loss of income related to medical problems on the part of low income residents whose inability to obtain medical care impedes their vocational rehabilitation. This problem has recently been documented by the Department of Economic Security."

on constitutionally protected activity, a State may not choose the way of greater interference. If it acts at all, it must choose 'less drastic means.' *Shelton v. Tucker*, 364 U.S. 479, 488 (1960)." *Dunn, supra* at 405 U.S. 343.

As has been shown earlier,[31] the Arizona Legislature consciously chose for parochial political reasons to narrow the tax base in regard to financing indigent medical care.[32]

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[31]See note 8, *supra*.

[32]Dr. O'Rourke in his Report asked the question: "Should medical dependents be cared for by local communities or by the state?" His answer was: "All trends in public medical care are toward community based programs with technical assistance provided by a State Department of Health Services in conformity with a rational statewide plan and appropriate financial support.

The state should avoid, whenever possible, the direct operation of personal health services, which are usually better organized when the local community is directly involved in their planning and operation." *Arizona Health Services, A Consultant's Report To The Joint Committee On Health Services*, pg. 37. See also (Cont'd to pg. 41)

(Cont'd to pg. 41)

In Addition, Arizona is the only State in the Union which does not participate in the Federal Medicaid system, 42 U.S.C.A. § 1396 *et. seq.* If Arizona decided to participate in the Federal Medicaid program, then under 42 U.S.C.A. § 1396a(b)(3) Arizona could not impose a durational residence requirement to the extent of Arizona's participation in the Federal program.[33]

Finally, this Court, while recognizing the importance of the state's fiscal integrity, has stated that the saving

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page 34 where Dr. O'Rourke recommends: "The State levy taxes on the basis of uniform assessment practices to pay for medical dependency."

[33] 42 U.S.C.A. 1396a(b)(3) states: "The Secretary shall approve any plan which fulfills the conditions specified in subsection (a) of this section, except that he shall not approve any plan which imposes, as a condition of eligibility for medical assistance under the plan - (3) any residence requirement which excludes any individual who resides in the State."

of money cannot justify an otherwise invidious classification. *Shapiro, supra* at 394 U.S. 633. See also *Rivera v. Dunn*, 329 F. Supp. 554, 558 (D. Conn. 1971), *aff'd mem.*, 404 U.S. 1054 (1972).

B. ADMINISTRATIVE CONVENIENCES DO NOT SATISFY THE COMPELLING INTEREST TEST

The Arizona Supreme Court in the present case stated:

> "How can a county plan to meet the future needs of its indigent sick unless there is some predictable factor? Certainly not a perfect answer but one which allows for some reasonable basis is that of resident population. Good county administrators plan ahead to meet the needs of their citizens. Collection of information on rising population figures and rate of growth is a continuing endeavor. Based on such data, county government can prepare budgets, plan for new facilities, secure financing, and generally do those things necessary to provide the service. Such efforts are not accomplished at a whim; time is essential, and so is a base from which to operate." *Maricopa County, supra* at 108 Ariz. 376, 498 P.2d 464.

Yet, in the affidavit of Barbara Beaty, who is the Controller of the Maricopa County Department of Health Services, she stated:

> "The data presented below are *estimates* due to the impossibility of determining the patient volume increases that will occur with the abolishment of the *residency requirement*. The cost figures are purposely conservative because of the intangibleness of the data." (A-12)[34]

This Court stated in *Shapiro*:

> "The argument that the waiting-period requirement facilitates budget predictability is wholly unfounded. The records in all three cases are utterly devoid of evidence that either State or the District of Columbia in fact uses the one-year requirement as a means to predict the number

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[34]The Arizona Republic seems to have been able to develop estimates of the number of people moving into the County. Moreover, A.R.S. § 46-261.12(A) (added 1966) states: "The health department shall determine, measure and forecast medical needs, available resources for, and alternate financing methods of the indigent and medically indigent population of the State."

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of people who will require assistance in the budget year. None of the appellants takes a census of new residents or collects any other data that would reveal the number of newcomers in the State less than a year. Nor are new residents required to give advance notice of their need for welfare assistance. Thus, the welfare authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance. In these circumstances, there is simply no basis for the claim that the one-year waiting requirement serves the purpose of making the welfare budget more predictable. In Connecticut and Pennsylvania the irrelevance of the one-year requirement to budgetary planning is further under scored by the fact that temporary, partial assistance is given to some new residents and full assistance is given to other new residents under reciprocal agreements. Finally, the claim that a one-year waiting requirement is used for planning purposes is plainly belied by the fact that the requirement is not also imposed on applicants who are long-term residents, the group that receives the bulk of welfare payments.

In short, the States rely on methods other than the one-year requirement to make budget estimates." *Shapiro, supra* at 394 U.S. 634-635.

The lack of documentation for the durational residence requirement in relation to planning needs in the present case is similar to the deficiency found in *Shapiro, supra*.

Finally, the Appellees' Motion To Affirm indicates:

"The residence requirement is an absolute necessity to permit intelligent planning for the continuation of adequate health services in Maricopa County. Absent such a requirement, the short-term effect would be that Arizona indigent citizens residing in counties other than Maricopa would flock to Maricopa County for a limited period of free health treatment, while the long-term effect would be that indigent persons throughout North America would be enabled to receive free medical care at the expense of Maricopa County Hospital, regardless of their place of residence, simply by stating that they have recently established residency

in Maricopa County. In either the long or short-term result, Maricopa County could become flooded with people demanding free treatment for various non-emergency ailments." Motion To Affirm at pgs. 5-6.

In effect, the Appellees are arguing that the durational residence requirement is necessary to determine the bona fide intent of the traveler to settle in Arizona. This argument was raised in the *Crapps* case, *supra*, and the Court stated:

> "But the Supreme Court in *Shapiro*, has held that such a presumption may not be erected to determine domicil (or residency as the terms are used synonymously) because the thing presumed (domicil) does not necessarily follow from the established standards (one (1) year's presence). Neither does the lack of one year of residency prove than an individual lacks the present intent to make his domicil in Duval County. The resulting classification of otherwise equal indigents, and the resulting dissimilarity in treatment afforded the two classes of indigents, based on such an irrational distinction, is prohibited by

the equal protection clause. Moreover, since in moving from state to state persons are exercising a constitutional right, any classification which serves to hinder that right is unconstitutional in the absence of a compelling state interest." *Crapps, supra* at 314 F. Supp. 183.[35]

The Board of Supervisors states that the elimination of the durational residence requirement will mean that persons within the State will flood Maricopa County "for a limited period" seeking free health treatment.[36] However, a simple residency requirement would seem

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[35]See also *Green v. Department of Public Welfare of State of Del.*, 270 F. Supp. 173, 178 (D. 1967), where the Court said: "More accurate alternatives are available to ascertain an individual's true intentions without exacting the protracted waiting period with dire economic and social consequences to certain individuals living in the State."

[36]See note 8 *supra*. Also, Pinal County, which is contiguous to Maricopa County, has had to do without a durational residence requirement since March 1971.

to be an adequate method of meeting the alleged influx from within the State. Moreover the State of Arizona through its Department of Economic Security has set down guidelines to determine residency for welfare purposes. See Appendix "D". Certainly such factors would be even more trustworthy for persons moving within the State to Maricopa County "for a limited period of free health treatment."

In relation to persons moving to Maricopa County from outside the State, the same indices for residency, as are used by the Department of Economic Security, could be established. As has been shown in Appendix "A", the "73 Inside Phoenix" publication had no difficulty in determining the number of persons who come to Maricopa County without an intent to permanently reside.

The present case certainly isn't

comparable to the tuition-residence problem posed in *Vlandis, supra*. As is well known, students normally travel to a state for the specific purpose of attending a university. The very act of school attendance requires the presence of the student in the state for a considerable period of time. In conjunction with the physical presence problem, there is the following consideration:

> "To be domiciled in a state, one must have a bona fide intent to make that state his home. In the case of a student, the requisite intent is often very difficult to prove. During the years when a student is attending college, his plans for future residence are usually vague and uncertain. Also, little reliance can be placed on any statement of intent by the student, since the student knows that he will realize a substantial reduction in tuition by being classified as a resident." Note, *Non Resident Tuition, supra* at 1158.

In contrast, the act of seeking medical care does not mean that the

person is forced to remain in the State. Vagueness or uncertainty concerning a person's intention to settle in the State are not normally characteristics of a person seeking medical care.

In fact, the Arizona Legislature could not have been particularly concerned with the difficulty of proving a bona fide intent for residence when in 1965 the Legislature passed a law covering "Medical Assistance For Aged". See Arizona Revised Statutes, A.R.S. § § 46-261, 46-261.01 to 46-261.11.[37]

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[37] A.R.S. § 46-261.01(c) provides in part: "The medical care aspects of this program shall consist of supplemental and complementary medical assistance in conjunction with the provisions of Title 18, parts A and B of the U.S. Public Law 89-97." Public Law 89-97 is Federal Medicare. Medicare does not require the states to institute the type of program passed by the Arizona Legislature (see A.R.S. § 46-261 *et. seq.*) and therefore the State of Arizona was not bound by any Federal residence restrictions on durational residence requirements. However, it

(Cont'd to pg. 51)

The eligibility for "Medical Assistance For Aged" is found in A.R.S. § 46-261.02. It states:

> "In addition to qualifying under the terms of this article, medical assistance for the aged may be granted to any applicant who meets and maintains the following requirements:
>
> * * *
>
> 3. Has established residence in Arizona at the time of application."[38]

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should be noted that to the extent Arizona directly participates in the Federal Medicare program the State cannot impose a durational residence requirement. See 42 U.S.C.A. § 1382(b)(2)(b).

[38]The Appellees breifly mention the problem of fraud in their Motion to Affirm. However, A.R.S. § 11-297(c) provides: "Any person who files a false or untrue statement with the board for the purpose of obtaining hospitalization, medical care or out-patient relief for himself, shall be guilty of a misdemeanor." As was also stated in *Shapiro*: "Of course, a State has a valid interest in preventing fraud by any applicant, whether a newcomer or a long-time resident. It is not denied, however, that the investigations now conducted entail inquiries into facts relevant to that subject." *Shapiro, supra* at 394 U.S. 637.

There is a growing realization on the state as well as national level that a condition of good health is important not only from the view point of an individual state of well-being but is also vital to the individual's ability to work and maintain his role as an economic producer in society.[39] Relatedly, a mobile population seeking a better way of life has been a valuable feature of American history. Disadvantaged groups, striving for improved living

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[39]President Nixon closed his *Health Message* to Congress by stating in part: "Not only is health more important than economic wealth, it is also its foundation; it has been estimated, for example, that ten percent of our country's economic growth in the past half century has come because a declining death rate has produced an expanded labor force.

Our entire society, then, has a direct stake in the health of every member. In carrying out its responsibilities in this field, a nation serves its own best interests even as it demonstrates the breadth of its spirit and depth of its compassion." *Health, supra* at page 18.

conditions,[40] have traditionally provided the impetus for the development of this country. Americans still move for the same reasons--better jobs, superior climate and the opportunity to start afresh. (See Appendix "E" concerning the attractions of Arizona.)

The Arizona one year durational residence Statute for hospital and medical care severely penalizes those persons who have exercised their right to travel. The Statute is therefore unconstitutional.

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[40]The Valley National Bank, an Arizona institution, indicates that Arizona ranks among the leading states in six important indices of growth. See Valley National Bank, *Arizona Statistical Review*, 28th Annual Edition, (Sept. 1972) page 3.

## CONCLUSION

The Amicus supports the position of the Appellants and submits that the judgment of the Court below should be reversed.

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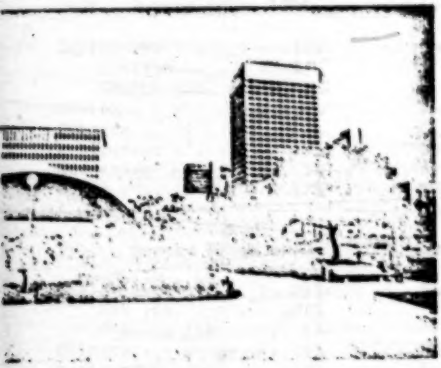
## CONCLUSION

# APPENDIX



# METRO PHOENIX 1972 POPULATION UP 9.6 PER CENT!

Million-strong Metropolitan Phoenix (Maricopa County) again experienced an accelerating growth rate during 1972. This was the third straight year that the Metro area has seen its population grow at an increasing rate. During 1972, Metro Phoenix added a net population increase of 103,000 persons for a 9.6 per cent growth rate! The growth rates for 1971 and 1970 were 5.8 and 4.4 per cent respectively.

Not all of the population growth can be attributed to permanent residents. There was an increase of approximately 15,000 in the less-than-year-round resident category, which now totals 35,000 people. These people reside throughout the Valley area, although two-thirds can be found in Districts 1, 5, 8, 17, 18 and 19, and they comprise a very important consumer aspect of the Phoenix market. They require 15,500 housing units – with 35 per cent of these households occupying single-family houses, 5 per cent townhouses, 33 per cent multiple units and 27 per cent mobile homes. Sixty-three per cent own their dwelling unit. The average less-than-year-round resident has been living in Metro Phoenix intermittently for nearly five years, is somewhat older (median age head of household is 61.8 years, although 30 per cent are under 35) and has a median household income of $9,553. The income figure is lowered somewhat by the fact that 49 per cent are retired. However, 17 per cent earn in excess of $25,000, reflecting the 16 per cent who are professional people. Most households are quite small (averaging 2.27 persons) and 81 per cent do not have children under 18. A majority (57 per cent) reside in the Metro area for more than six months at a time.

There was, however, tremendous growth during 1972 of permanent year-round residents, who now total 1,140,000. Much of this could be attributed to a sizable increase in in-migration and a decline in out-migration, as the table at left indicates. The resulting net migration figure of 92,000 persons was nearly twice that of 1971. See pages 13-15 for additional information on our new comers.

It is anticipated that 1973 will be another year of outstanding population growth for Metro Phoenix. However, the growth rate is expected to decline somewhat. Nevertheless, the resulting 8.4 per cent increase will generate an additional 75,000 people. The Metro area will reach one and a quarter million people (including less-than-year-round residents) for the first time! Approximately 1,210,000 will be year-round residents.

**METRO PHOENIX POPULATION**

| | Year End 1972 | Year End 1971 | Year End 1970 |
|---|---|---|---|
| Resident Population in Regular Housing Units | 1,123,000 | 1,034,000 | 973,000 |
| Resident Population in Group Housing | +18,000 | +18,000 | +17,000 |
| Total Resident Population | 1,140,000 | 1,052,000 | 990,000 |
| Less-Than-Year-Round Residents | +35,000 | +20,000 | +23,000 |
| Total Population | 1,175,000 | 1,072,000 | 1,013,000 |

**METRO PHOENIX POPULATION GROWTH COMPONENTS**

| | 1972 | 1971 | 1970 |
|---|---|---|---|
| In-Migration (Newcomers) | 147,000 | 113,000 | 100,000 |
| Out-Migration | −55,000 | −47,000 | −75,000 |
| Net Migration | 92,000 | 66,000 | 25,000 |
| Net Natural Increase | +11,000 | +11,000 | +11,000 |
| | 103,000 | 77,000 | 36,000 |

Source: Bureau of Economic Research, Arizona State University

# APPENDIX "B"

Reasons For Moving To Maricopa County - Reported in the "Inside Phoenix" Publications of 1967 through 1973.

**1967 Survey taken 1966**

| | |
|---|---|
| Employment | 37% |
| Health | 20% |
| Climate | 14% |
| Retirement | 9% |
| Education | 4% |
| Other | 16% |

**1968 Survey taken 1967**

| | |
|---|---|
| Employment | 37% |
| Health | 20% |
| Climate | 14% |
| Retirement | 8% |
| Education | 4% |
| Other | 17% |

**1969 Survey taken 1968**

| | |
|---|---|
| Employment | 34% |
| Had job | 27% |
| Sought job | 7% |
| Health | 20% |
| Climate | 14% |
| Retirement | 10% |
| Education | 5% |
| Other | 17% |

**1970 Survey taken 1969**

| | |
|---|---|
| Employment | 32% |
| Had job | 27% |
| Sought job | 5% |
| Health | 21% |
| Climate | 15% |
| Relatives live here | 9% |
| Retirement | 8% |
| Education | 5% |
| Other | 10% |

**1971 Survey taken 1970**

| | |
|---|---|
| Employment | 33% |
| Had job | 27% |
| Seeking job | 6% |
| Climate | 14% |
| Retirement | 12% |
| Health | 16% |
| Relatives | 11% |
| Education | 4% |
| Other | 10% |

**1972 Survey taken 1971**

| | |
|---|---|
| Employment | 39% |
| Had job | 31% |
| Sought job | 8% |
| Health | 13% |
| Climate | 11% |
| Relatives live here | 10% |
| Retirement | 7% |
| Education | 6% |
| Other | 14% |

**1973 Survey taken 1972**

| | |
|---|---|
| Employment | 44% |
| Had job | 33% |
| Seeking job | 11% |
| Climate | 15% |
| Relatives live here | 11% |
| Health | 10% |
| Retirement | 6% |
| Education | 3% |
| Other | 11% |

# APPENDIX "C"

XI

The plaintiff GEORGE KNAPP is a diabetic and in need of insulin and has only enough insulin to last him through the 15th day of October, 1970.

XII

That the plaintiff EULA KNAPP suffers from fainting spells and epilepsy and on the 28th day of September, 1970, she suffered a fainting spell, and fell on her stove injuring herself severely and was admitted to the Pinal County General Hospital. That she will require care for her burns after the emergency situation passes; that she will also continue to require medical assistance for her epilepsy and fainting spells.

XIII

On May 29, 1970, the plaintiffs EULA and GEORGE KNAPP made application for medical care and that the plaintiff EULA KNAPP received a prescription. That on August 6, 1970 the defendants the "Board of Supervisors" refused to furnish the plaintiff with any medical care, for the reason that she was not a resident of Pinal County, Arizona for one year prior to the application. See Exhibit A.

XIV

That the plaintiff GEORGE KNAPP has also been advised by the Pinal County Board of Supervisors that he would receive no medical care of any kind since he has not been a resident of Pinal County, for one year.

XV

That the plaintiff BERTHA VALENCIANO made application for medical care on or about the 25th day of September. That before that she was seen in a clinic which she believes was at county expense and was given an examination by nurses, did not see a physican and was given

some medication which she believes to be vitamin pills. That she has since been advised that she would not be admitted to the Pinal County General Hospital for child birth and will not receive any further medical treatment. She was further advised by the "Board of Supervisors" to return to Nogales, Santa Cruz County, Arizona to have her child. See Exhibit B. That she presently resides with six children between the ages of 5 and 12 in Eloy, Pinal County, State of Arizona where said children attend school; that Nogales is approximately 110 miles from Eloy.

XVI

The plaintiffs are all indigents, on welfare, in need of medical care without resources, properties, assets, or funds whatsoever to pay for the present and future medical and hospital expenses.

XVII

That the defendants, the "Board of Supervisors, have the mandatory duty under the law of the State of Arizona to provide for hospitalization and medical care of the indigent in need of medical care and hospitalization within Pinal County under provisions of Title 11, Chapter 3, Article 7 as amended of the Arizona Revised Statutes.

XVIII

That the defendant, the "Board of Supervisors" and its members thereof, have refused to accept the plaintiff BERTHA VALENCIANO as a patient in the Pinal County General Hospital, controlled and operated by said defendants, as required by law and have refused to provide the plaintiffs EULA KNAPP and GEORGE KNAPP with medical care as required by law, for the reason that the plaintiffs have not been residents of Pinal County, State of Arizona for a period of 12 months proceeding their demand for hospitalization and medical care as indigent sick.

XIX

That the said refusal and denial is based pursuant to the

# APPENDIX "D"



7. Passports are acceptable evidence for verification of age and birthplace.

8. Insurance papers. The age stated on an application for insurance may be less than the actual age of the applicant, but seldom more. Therefore, anyone whose age appears from these records as 65 is in all probability at least 65.

9. Military Record or Discharge Papers from Military Service: Selective Service Records or Discharge Papers are acceptable for verification of age and place of birth. World War I selective service records may be requested by sending a completed DPM-329, Application for Search of 1917-18 Draft Registration Records, signed by the applicant, to: General Services Administration, Region 4, Federal Records Center, 221 St. Joseph Street, East Point, Georgia, Zip Code 30044.

10. United States Census Records: The U. S. Department of Commerce, Bureau of Census supplies the department with Application for Search of Census Records, which carries our form #DPM-311. The form has instructions for completing on the reverse side. Please note the form must be signed by the applicant and he must pay the fee for search. Other means of obtaining birth date and place of birth should be exhausted before if is suggested that the applicant obtain information from census records.

11. Other Documentary Evidence for Verifying Date of Birth and/or Place of Birth: An individual's age is shown on voting registrations, automobile operator's license, hunting license and fishing license. The date and place of birth of a parent is usually shown on the birth registration of a son or daughter. Other records which will provide such verification are: Hospital, fraternal organizations, employment, civil service, homestead applications, school record and other public or legal records.

12. Notarized Statements: Notarized affidavits from non-related persons who have known the applicant over a long period of time will be accepted when there is no conflicting evidence as to date and place of birth.

3-1103 Residence:

1. Residence is a matter of intent and physical presence. Physical presence is self-evident. Intent is more difficult to determine, but can usually be established by the applicant's actions since coming to Arizona. The following would be considered good indicators of intent:

   A) renting or buying a home or other property in the state,
   B) moving some furnishings and other possessions from previous residence to Arizona,
   C) enrolling children in school here,
   D) licensing an automobile here,
   E) obtaining an Arizona drivers license,
   F) accepting employment here,
   G) registering to vote here,
   H) joining a local church,
   I) joining a local union.

There are other actions which will also give an indication of where the individual or family intends to make their home, which may be used to establish their intent.

APPENDIX "E"


# ARIZONA PROGRESS

VALLEY NATIONAL BANK

MORE THAN 130 OFFICES — DEPOSITS OVER $2 BILLION

A monthly, factual report of the Arizona economy, compiled by the Valley National Bank of Arizona

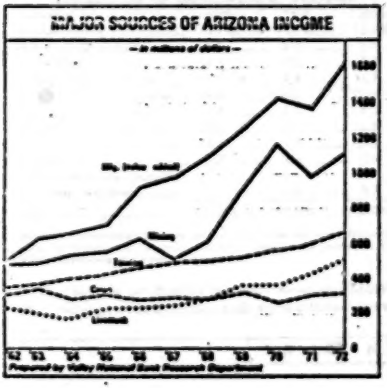
*Research Department* — JUNE-JULY, 1973 — *P. O. Box 71, Phoenix 85001*


## The Growth Of Job Opportunities In Arizona

In the key economic indices of population, employment, and personal income, Arizona consistently over the past two decades has ranked among the fastest growing states in the nation. In recent years, moreover, Arizona's economic growth rate has accelerated. The success factors which are basic to Arizona's rapid development are:

- a sunny, mild climate with low humidity which has attracted new residents and tourists as well as new industry;
- and, progressive state and local government which has created a favorable atmosphere for business and workers alike.

One of the important strengths of the Arizona economy is diversification. Manufacturing has moved to the foreground as the state's leading income producer, but mining operations, agriculture with farming and ranching both major industries, and tourism and travel, also play a leading role in the state's economy. In past years, in instances where one of these major sources of income experienced a temporary setback, the slack in the economy largely was taken up with expansion in another industry. Indications are strong that Arizona's economy will benefit further from diversification in the next five years, as it did in the past.




**The Arizona economy in review:**

| | 1968 | 1973 | % Change |
|---|---|---|---|
| Population | 1,482,000 | 2,035,000 | + 21.0% |
| Employment | 567,500 | 780,000 | + 38.7 |
| Personal Income | $5,062,000,000 | $9,640,000,000 | + 90.4 |
| Retail Sales | 3,074,000,000 | 6,030,000,000 | + 96.2 |
| Bank Deposits | 2,592,000,000 | 5,650,000,000 | + 118.0 |
| Agricultural Prod. | 572,000,000 | 900,000,000 | + 57.3 |
| Mfg. (Value Added) | 1,110,000,000 | 1,960,000,000 | + 76.6 |
| Mineral Prod. | 618,000,000 | 1,200,000,000 | + 94.2 |
| Tourism Expend. | 500,000,000 | 700,000,000 | + 40.0 |

**The Arizona economy projected forward:**

| | 1973 | 1978 | % Change |
|---|---|---|---|
| Population | 2,035,000 | 2,450,000 | + 20.4% |
| Employment | 780,000 | 960,000 | + 23.1 |
| Personal Income | $9,640,000,000 | $16,390,000,000 | + 70.0 |
| Retail Sales | 6,030,000,000 | 10,615,000,000 | + 76.0 |
| Bank Deposits | 5,650,000,000 | 9,430,000,000 | + 66.9 |
| Agricultural Prod. | 900,000,000 | 1,200,000,000 | + 33.3 |
| Mfg. (Value Added) | 1,960,000,000 | 3,000,000,000 | + 53.1 |
| Mineral Prod. | 1,200,000,000 | 1,800,000,000 | + 50.0 |
| Tourism Expend. | 700,000,000 | 1,000,000,000 | + 42.9 |

As shown in these tables, the business outlook for Arizona, and specifically for the state's metropolitan centers (Phoenix and Tucson), is excellent. The projections for the next five years indicate a vigorous upward growth trend, although in some areas a somewhat slower growth rate compared with the record performance of the last five years. Along with an increase in population,

- a further huge boost in personal income
- another sharp rise in retail sales
- and continued rapid expansion in industrial output.

For the worker, it means expanded job opportunities in virtually all types of employment—for the professional and technical trained worker, the skilled and semi-skilled, the sales worker, clerical worker, and also workers in other job categories.

1973 employment in Arizona is expected to average about 780,000. It will expand to around 960,000 by 1978—a net increase in five years of about 180,000 jobs. The growth in employment by industry:

| *Industry* | *1973* | *1978* | *Change* |
|---|---|---|---|
| Manufacturing | 107,000 | 150,000 | 43,000 |
| Mining & Quarrying | 23,500 | 26,000 | 2,500 |
| Construction | 59,000 | 53,000 | – 6,000 |
| Transportation, Utilities | 34,000 | 40,000 | 6,000 |
| Retail & Wholesale Trade | 163,000 | 200,000 | 37,000 |
| Fin., Ins. & Real Estate | 39,000 | 50,000 | 11,000 |
| Services & Misc. | 120,000 | 156,000 | 36,000 |
| Government | 149,000 | 200,000 | 51,000 |
| Agriculture | 34,000 | 32,000 | – 2,000 |
| Other Domestics, Unpaid Family Workers | 51,500 | 53,000 | 1,500 |
| Total | 780,000 | 960,000 | 180,000 |

*Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.*

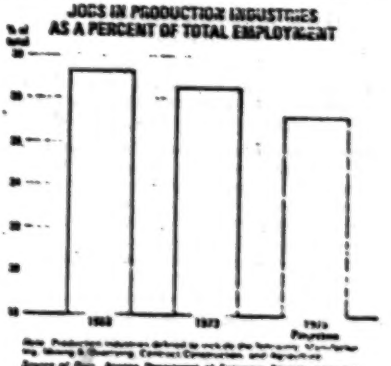
Job growth is forecast to outpace population growth—23% to 20%—and all industries except construction and agriculture should experience an absolute increase in number of workers. In the last five years, the proportion of the state's population that was employed moved sharply upward: out of every 100 Arizonans, 33 held jobs in 1968, and this increased to 38 out of every 100 by 1973. For the next five years, the proportion is forecast to stay relatively stable, climbing only slightly to about 39 employed out of every 100 population. Meanwhile, the distribution of employment *by industry* has been steadily changing, and is expected to change still further.

DISTRIBUTION OF EMPLOYMENT BY INDUSTRY

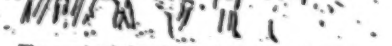
| *Industry* | *1968* | *1973* | *1978* |
|---|---|---|---|
| Manufacturing | 15.1% | 13.7% | 15.6% |
| Mining & Quarrying | 2.7 | 3.0 | 2.7 |
| Construction | 4.8 | 7.5 | 5.5 |
| Transportation, Utilities | 4.8 | 4.4 | 4.2 |
| Retail & Wholesale Trade | 19.0 | 20.9 | 20.8 |
| Fin., Ins. & Real Estate | 4.4 | 5.0 | 5.2 |
| Services & Misc. | 13.9 | 15.4 | 16.3 |
| Government | 19.5 | 19.1 | 20.8 |
| Agriculture | 6.7 | 4.4 | 3.4 |
| Other (Domestics, Unpaid Family Workers) | 9.1 | 6.6 | 5.5 |
| Total | 100.0% | 100.0% | 100.0% |

*Source: Percentage figures calculated from Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.*

The state's productive industries—manufacturing, mining, construction, and agriculture—show




a decrease in their share of total employment between 1968 and 1973, from 29.3% of all jobs to 28.6%. The employment share of these productive industries will drop further, from 28.6% to 27.2%, between 1973 and 1978—this partly the result of the continuing industrial revolution or technological and scientific advancement and development.



The service industries in Arizona—retail activity, finance, insurance and real estate, government, personal services, etc.—steadily are increasing their percentage of total employment. The service industries currently account for about three out of every four jobs in Arizona. The West, and the U.S. as a whole, also are increasingly moving to a services-oriented economy.

### *Job Opportunities By Occupational Group*

The major increase in jobs in the next several years is expected to occur in the professional and technical areas, in clerical positions, and in personal services. The professional and technical workers, which includes teachers, doctors, lawyers, and scientists, among others, will comprise

the largest single occupational group in 1978, equal to 18% of total employment in Arizona.

Most of the professional and technical jobs require four years of college—similarly, many of the new sales positions will require a college education—and the bulk of the other job opportunities to be filled over the next five years will require community college preparation, high school vocational training, and/or trade school experience, as well as apprenticeship or on-the-job training.

| Job Category | 1973 | 1978 | Change |
|---|---|---|---|
| Professional & Technical | 133,400 | 172,000 | + 38,600 |
| Managers & Administrators | 78,800 | 93,100 | + 14,300 |
| Sales Workers | 60,800 | 73,900 | + 13,100 |
| Clerical Workers | 136,500 | 170,900 | + 34,400 |
| Craftsmen (Skilled) | 109,200 | 135,400 | + 26,200 |
| Operatives (Semi-Skilled) | 75,600 | 90,200 | + 14,600 |
| Transportation | 28,100 | 33,600 | + 5,500 |
| Laborers (Unskilled) | 47,900 | 53,700 | + 3,800 |
| Service Workers | 99,100 | 128,600 | + 29,500 |
| Other | 8,600 | 8,600 | — |
| Total | 720,000 | 960,000 | + 180,000 |

*Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.*

While an additional 180,000 new jobs are projected for Arizona between 1973 to 1978, there actually will be about 325,000 *job opportunities* due to retirements and other withdrawals from the total labor force, and deaths. These jobs will be filled by in-migrants to Arizona and also locally trained new entrants and re-entrants into the labor force. Whereas the professional and technical category will account for the largest number of jobs in 1978, there will be more job opportunities opening up in the clerical field than in any other employment category.

EMPLOYMENT OPPORTUNITIES IN ARIZONA
1973 to 1978

| Job Category | Number | % of Total |
|---|---|---|
| Professional & Technical | 62,600 | 19.1% |
| Managers & Administrators | 27,000 | 8.3 |
| Sales Workers | 25,600 | 7.7 |
| Clerical Workers | 70,000 | 21.5 |
| Craftsmen (Skilled) | 38,000 | 11.7 |
| Operatives (Semi-Skilled) | 28,000 | 8.6 |
| Transportation | 8,000 | 2.5 |
| Laborers | 10,000 | 3.1 |
| Service Workers | 54,000 | 16.6 |
| Other | 3,000 | 0.9 |
| Total | 323,000 | 100.0% |

*Source: Arizona Department of Economic Security estimates that were adjusted by VNB Economic Research Department.*

## Arizona — Mountain States, The Southwest, Or Pacific Coast?

Arizona appears to possess chameleon characteristics when it comes to identifying with a Region. Is Arizona in the Rocky Mountain States, or the Southwest, or Pacific Coast Region?

With rugged mountain ranges and lofty peaks scattered from border to border, the state can legitimately be considered part of the Rocky Mountain Region. The San Francisco peaks at an elevation of 12,670 feet, tower over the city of Flagstaff. In the northwest, close to the Grand Canyon, Mt. Trumbull rises to approximately 8,000 feet. Roof Butte, near Canyon de Chelly in northeast Arizona, climbs to 9,800 feet. Mt. Baldy in the eastern White Mountains rises to 11,500 feet. In the Coronado National Forest, Mt. Graham near the city of Safford, spirals to 10,700 feet; and Mt. Lemmon, outside of Tucson, is measured at 9,100 feet.

Arizona also can lay claim to being a part of the Southwest. It borders New Mexico, and Old Mexico. It is the heart of the Sun Country, and shares a common heritage with neighboring southwestern states in history of settlement, similarities in natural resources and development, and a likeness in desert surroundings. Tourism and travel brochures generally identify Arizona with the sun-bathed Southwest, and most local residents concur.

Some groups and individuals, however, refer to Arizona as part of the Pacific Region. Although Arizona is not directly on the Pacific coast, San Luis in the southwestern-most portion of the state, just south of Yuma, is only about 40 miles from the Gulf of California via the Colorado River. Yuma was once a seaport before the damming of the Colorado River and could be again if resolutions introduced in the Senate are acted upon. The California influence in Arizona is evident in the similarity of the lifestyles of the citizens in both states. More of Arizona's citizens have come from California than from any other state; similarly, California is the first choice of Arizonans who leave here.

With its diverse topographic, geographic and climatic characteristics, Arizona truly can be called one state in three regions.

*(see map on page 4)*

Supreme Court, U. S.
FILED
JUL 25 1973
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1972

No. 72-847

MEMORIAL HOSPITAL, HENRY EVARO, et al.,

Appellants,

vs.

MARICOPA COUNTY and HENRY H. HAWS, B. W. BURNS and J. ROBERT STARK, Supervisors

Appellees.

On Appeal from the Supreme Court of Arizona

# BRIEF FOR MARICOPA COUNTY

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Phoenix, Arizona 85006

Counsel for Appellees

MARICOPA COUNTY
1871
ARIZONA

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## I STATEMENT OF THE CASE

Appellees accept Appellants' statement of the Case and Question Presented as set forth in their brief.

## II SUMMARY OF ARGUMENTS

Appellees respectfully submit that the Arizona durational residence statute, prescribing a 12 month period of County residence as a condition of receiving medical care at County expense is a valid exercise of the legislative power of the State of Arizona. It differs in two respects from the durational residence statute declared unconstitutional by the Court in the case of Shapiro vs. Thompson 394 US 618, 89 S.Ct.1322, 22 L.Ed. 2d 600 (1969).

First, the statute does not constitute an impediment to interstate travel because the services and benefits sought do not threaten the newcomer's physical survival.

Second, the statute promotes a compelling State interest because the added cost of providing medical care to new residents at County expense threatens the fiscal integrity of the State's Counties.

## III ARGUMENT

THE DURATIONAL RESIDENCE STATUTE FOR TREATMENT AT THE COUNTY HOSPITAL DOES NOT HAVE A CHILLING EFFECT ON THE RIGHT OF INTERSTATE TRAVEL.

Appellants rely most heavily on the case of Shapiro v. Thompson, 394 US 618, 89 S.Ct. 1322, 22 L.Ed.2d 600 (1969) to support their contention that the statute is unconstitutional.

In the Shapiro case, the Supreme Court of the United States held that it violated the Equal Protection clause of the 14th Amendment to the United States Constitution for the State of Connecticut to impose a one year residence requirement for eligibility for general welfare. However, in his written opinion Justice Brennan said:

> "We imply no view of the validity of waiting period or residence requirements determining eligibility to vote, eligibility for tuition-free education, to obtain a license to practice a profession, to hunt or fish, and so forth. Such requirements may promote compelling state interests on the one hand, or, on the other, may not be penalties upon the exercise of the constitutional right of interstate travel." Shapiro v. Thompson, 394 U.S. at 638, footnote 21, emphasis supplied.

Simply stated, the decision of the U.S. Supreme Court in the Shapiro case, supra, is that durational residence requirements of the type herein involved will be upheld only if they do not constitute an impediment to the constitutional right of interstate travel, or alternatively, if they promote a compelling state interest.

In the Shapiro case, supra, the Court found that durational residence requirements for eligibility for welfare did constitute such an impediment and did not promote any compelling state interest. In the instant case the Court is concerned solely with the constitutionality of A.R.S. 11-297, creating a durational residence requirement for non-emergency medical services at public expense.

Appellees respectfully submit that ineligibility for non-emergency medical services at public expense does not constitute an impediment to the

constitutional right of interstate travel. As the Court noted in the Shapiro case, supra, a person moving to another state, if ineligible for welfare during the first year of his residence, may find that his very existence is threatened. If he is unable to obtain food, clothing and shelter essential to his existence, he will not survive. In the Shapiro case, supra, the Court said:

> "An indigent who desires to migrate, resettle, find a new job, start a new life will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute." Shapiro v. Thompson 394 US at 629.

A person ineligible for non-emergency medical services at public expense does not find his existence likewise threatened. The nature and extent of the non-emergency public health facilities is merely a matter to be considered along with quality of schools, condition of the local economy, weather, level of taxation, quality of police and fire protection and many other matters. Ultimately every public activity within a state can be considered to have some effect on the desirability of a state for purpose of immigration by residents of other states. It is necessary in determining whether or not a statute constitutes an impediment to the right of interstate travel for the court to employ a rule of reason. A statute serving a legitimate public purpose which does not have a demonstrably chilling effect on the right to interstate travel does not fall within the category struck down by the Court in the Shapiro case.

Appellees respectfully submit that A.R.S. 11-297 does not have such an effect. A newcomer to the state remains eligible for emergency services necessary for the preservation of life or limb.

The durational residence requirement of issue in this case resembles more the one year residence requirement for reduced University tuition upheld by this Court in Starns v. Malkerson 326 F. Supp. 234, (D. Minn. 1970) aff'd. 401 U.S. 985 (1970) than it does the life threatening requirement struck down by the Court in Shapiro v. Thompson op. cit. In that case, the District Court distinguished the right to receive reduced tuition from the right to receive direct welfare benefits in two respects: the requirement was not part of a concerted plan to discourage newcomers from entering the State, and the requirement did not deny the necessities of life to needy residents. Each of the saving features found by the District Court and upheld by this Court is present in this case.

Appellants conceded that they could not demonstrate by statistics that the durational residence statute had deterred newcomers from moving into the State. The only conclusion one can draw from the statistics of the U.S. Bureau of Census, mentioned by Appellants on page 25 of their brief, is that immigration to the state has occurred at an unusually high rate and the durational residence statute has had little if any impact on that immigration. The thirty-six year old memorial of the Arizona legislature relied upon by both Appellants and Amicus Curiae as evidence of an unwholesome desire to exclude the needy and oppressed exhibits no such intent, but only a commendable concern for their well-being and an honest recognition of the limited resources of a State then underpopulated and underdeveloped.

A contrary legislative intent can be found in Arizona Revised Statutes 11-259, providing as follows:

A.R.S. § 11-259 County Immigration Commissioner

"A. The board may appoint a county commissioner of immigration who shall hold office

for two years and shall receive an annual salary not exceeding six hundred dollars. The commissioner shall:

1. Provide information requested by persons desiring to immigrate to the county or make investments therein.

2. Correspond with immigration bureaus, chambers of commerce, tourists bureaus or other commercial bodies, and provide data for the guidance of prospective immigrants or tourists.

3. Furnish reliable information regarding localities in the county where the settler or tourist may choose a home or make investments.

4. Issue maps and pamphlets on the resources of the county.

5. Promote tourist travel or the investment of capital, and distribute such documents to insure their most useful circulation.

6. Assist nonprofit tourist attractions organized pursuant to § 10-451.

B. The commissioner may hire necessary clerks, prescribe their duties and fix their compensation. Such expenditures shall be first authorized by the board when approving the annual budget, and when so authorized shall be included in the amount to be collected by the annual county tax levy.

C. Counties of the first class having a population of one hundred thousand or over, as determined by the last official census of the United States, may expend a

further sum not exceeding two hundred thousand dollars annually for the purposes prescribed in this section.

D. Counties of the first class having a population of less than one hundred thousand, as determined by the last official census of the United States, may expend a further sum not exceeding fifty thousand dollars annually for the purposes prescribed in this section.

E. Counties of the second class may expend a sum not exceeding ten thousand dollars annually for the purposes prescribed in this section.

F. Counties of the third class may expend a sum not exceeding five thousand dollars annually for the purposes prescribed in this section. As amended Laws 1958, Ch.37, § 1; Laws 1968, Ch.109, § 1."

The manifest intention of the Arizona legislature, as shown by A.R.S. 11-259 is to attract and welcome newcomers to the State, not exclude them with discriminatory legislation, as was the case in Shapiro v. Thompson, op. cit.

Thus here, as in Starns v. Malkerson, op. cit. the durational residence statute in question is distinguishable from the invidious classification declared unconstitutional by this Court in that it shows no intent to discourage immigration and the exercise of the right of interstate travel.

The second circumstance, cited by the District Court and affirmed by this Court as a criterion, which distinguishes the present case from Shapiro v. Thompson, is that the benefits withheld are not necessities of life. It is difficult to deny that the nature and quality of one's life can be substantially improved by a University education, and

that some persons may be delayed by one year in obtaining such an education by durational residence requirements. Nevertheless, this circumstance was not found to be sufficiently compelling to deter the exercise of the right of interstate travel. Precisely the same may be said of the Appellant Evaro. Appellees do not deny that he experienced discomfort if he was unable to find other medical resources during the year that he had to wait to be eligible to receive medical care at public expense. Nevertheless, his discomfort was not life threatening. Appendix p. 9. If his discomfort became life threatening, he became eligible for treatment under the very statute which Appellants attack as unconstitutional.

Appellees concede that under the doctrine of Shapiro v. Thompson, the State of Arizona may not deny to new residents of the State medical services necessary to preserve their life or limb. The statute involved in this case expressly permits such treatment to be made to any person, regardless of the term of his residence, if any, in the State. The statute provides:

A.R.S. § 11-297. Hospital treatment; application; affidavit

"A. Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low in-

come without sufficient funds to provide himself necessary hospitalization and medical care, and that he has been a resident of the county for the preceding twelve months.

B. No person shall be admitted to the hospital or receive relief without an order from a member of the board.

C. Any person who files a false or untrue statement with the board or a member thereof for the purpose of obtaining hospitalization, medical care or outpatient relief for himself, shall be guilty of a misdemeanor. As amended Laws 1968, Ch.125, § 1; Laws 1972, Ch.142, § 13." (Emphasis supplied)

The California Court of Appeals considered the application of the Shapiro case to durational residence requirements and came to the same conclusion as the United States District Court and this Court in Starns v. Malkerson, op. cit. In Kirk v. Board of Regents of Univ. of Cal., 273 Cal. App.2d 430, 78 Cal.Rptr. 260 (1969), appeal dismissed, 396 U.S. 554, the California Court said:

"While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. Shapiro involved the immediate and pressing need for preservation of life and health of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in Shapiro could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning do not involve similar risks." 78 Cal.Rptr. at 267.

THE ARIZONA DURATIONAL RESIDENCE STATUTE PROMOTES A COMPELLING STATE INTEREST.

The Court in Shapiro said that "fiscal expediency" does not constitute a compelling purpose for imposing durational residence requirements. However, the exhibits shown in the Appendix demonstrate that the annual cost of furnishing medical care to recently arrived indigent residents of the County would be approximately $2,500,000, causing an increase of 3.27% in the entire County budget, an increase of 13.3% in the Hospital budget, and an 8.45% increase in the County's property tax rate, a raise of 18 cents from $2.13 to $2.31 per hundred dollars of assessed valuation.

Appellees respectfully submit that an increase in the level of public expenditures of this magnitude goes beyond mere "fiscal expediency" and becomes a matter of critical public importance. The ability of the taxpayers of Arizona to pay ever increasing property taxes is limited. An increase of this magnitude could adversely affect the economy of the State and put the ownership of their homes beyond the reach of many citizens. New industry could be deterred from relocating in the State, and the net result of such a major increase in property taxes could be a chilling effect on the right of interstate travel hugely exceeding in impact the alleged impediment with which we are dealing.

Appellees concede that they could finance such medical care by taking an equivalent amount from the budgets of the Sheriff, the County Attorney, the Courts and other essential offices supported by local taxes. Obviously, this is not a realistic alternative. Newcomer and established residents alike depend on these public offices for the preservation of an orderly free society in which they may pursue their individual goals.

Appellees recognize the argument that the de-

cision of the Supreme Court affects only the division of welfare funds among the persons entitled thereto and does not obligate the states to appropriate additional funds. In the case of welfare payments there might be some validity to this argument; in the case of medical services furnished at public expense, it is grotesque to suggest that the County should furnish medical services to a larger number of people by reducing the quality of the service furnished and thereby deny to all persons medical facilities adequate to their needs.

Appellants and Amicus Curiae attempt to diminish the impact of the fugures quoted above by attacking their precision or denying the importance of an increase of this magnitude in the taxes which the Counties may impose on their residents on top of Federal and State Income Taxes, Municipal and State sales and property taxes, school district taxes, Federal excise taxes, and other exactions. Appellees concede that their estimates are rough and may be understated or overstated. Appellants and Amicus Curiae have offered no others. The essential fact remains: the annual exaction of two and one half million dollars, more or less, from a very limited tax base threatens the economic welfare of the entire County and jeopardizes the provision of other services, equally vital to the common welfare of old and new residents of the County. Appellees respectfully submit that the State has a compelling interest in preventing this from occurring.

APPELLANTS' AUTHORITIES

Appellees will not burden the Court with an exhaustive commentary on every citation that Appellants have managed to insert in their brief. The cases relied upon most heavily by Appellants do require some comment.

Valenciano v. Bateman, 323 F. Supp. 600 (D. Ariz.

1971) is exactly contrary to the holding to the Arizona Supreme Court in the instant case. It was to resolve this conflict in Federal and State interpretations of the United States Constitution that Appellees requested this Court to accept jurisdiction of this appeal. With all respect for the wisdom of the United States District Court, Appellees would point out that the Court in that case apparently was not asked to consider the availability of emergency medical care to all indigent newcomers in Arizona and the financial impact of its ruling on the Counties of the State, for its decision does not discuss these issues at length.

Vaughan v. Bower, 313 F. Supp. 37, aff'd mem., 400 U.S. 884 (1970) dealt with the power of the Superintendent of the Arizona State Hospital to transport a newly arrived resident to her state of origin. A.R.S. 36-522, authorized the superintendent to evict from the State of Arizona an inmate of his institution who had not resided in the State for one year. This act, known to veteran criminal lawyers as a "float", is an obvious direct invasion of the right of interstate travel.

Graham v. Richardson, 403 U.S. 365, 91 S.Ct. 1848, 29 L.Ed. 2d 534 (1971) dealt with a fifteen year residency requirement for receiving general welfare if the applicant was an alien. The sole justification for the requirement was citizenship. The benefit withheld was necessary for the otherwise eligible applicant to survive, and no compelling financial interest was shown. Nothing in that case refutes the Appellees' position.

Goldberg v. Kelly, 397 U.S. 254, 90 S. Ct. 1011, 25 L.Ed. 2d 287 (1970) dealt with the point in time at which a state was obliged to provide a hearing guaranteed by the Fifth and Fourteenth Amendments before depriving a welfare applicant of a benefit that may have been necessary for her physical survival. It differed from the present

case in that the applicant's vital needs were involved and there was a direct invasion of a right expressly granted to all inhabitants of the land.

Appellants and Amicus Curiae have dwelt at length upon the wisdom of the Arizona durational residence statute and system of financing medical care of the indigent. They contend that the legislature of the State could find better ways to deal with its problem. Such arguments are best answered by citing the opinion of this Court in Dandridge v. Williams, 397 U.S. 471, 90 S. Ct. 1153, 25 L.Ed. 2d 491 (1970). In that case, the Court said:

> "We do not decide today that the Maryland regulation is wise, that it best fulfills the relevant social and economic objectives that Maryland might ideally espouse, or that a more just and humane system could not be devised. Conflicting claims of morality and intelligence are raised by opponents and proponents of almost every measure, certainly including the one before us. But the intractable economic, social, and even philosophical problems presented by public welfare assistance programs are not the business of this Court. The Constitution may impose certain procedural safeguards upon systems of welfare administration. But the Constitution does not empower this Court to second-guess state officials charged with the difficult responsibility of allocating limited public welfare funds among the myriad of potential recipients." Dandridge v. Williams 397 U.S. at 487. Citations omitted.

Respectfully submitted,

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Counsel for Appellees

July, 1973

# MEMORIAL HOSPITAL ET AL. *v.* MARICOPA COUNTY ET AL.

APPEAL FROM THE SUPREME COURT OF ARIZONA

No. 72-847. Argued November 6, 1973—
Decided February 26, 1974

This is an appeal from a decision of the Arizona Supreme Court upholding the constitutionality of an Arizona statute requiring a year's residence in a county as a condition to an indigent's receiving nonemergency hospitalization or medical care at the county's expense. *Held:* The durational residence requirement, in violation of the Equal Protection Clause, creates an "invidious classification" that impinges on the right of interstate travel by denying newcomers "basic necessities of life." *Shapiro* v. *Thompson*, 394 U. S. 618. Pp. 253–270.

(a) Such a requirement, since it operates to penalize indigents for exercising their constitutional right of interstate migration, must be justified by a compelling state interest. *Shapiro* v. *Thompson, supra; Dunn* v. *Blumstein*, 405 U. S. 330. Pp. 253–262.

(b) The State has not shown that the durational residence requirement is "legitimately defensible" in that it furthers a compelling state interest, and none of the purposes asserted as justification for the requirement—fiscal savings, inhibiting migration of indigents generally, deterring indigents from taking up residence in the county solely to utilize the medical facilities, protection of long-time residents who have contributed to the community particularly by paying taxes, maintaining public support of the county hospital, administrative convenience in determining bona fide residence, prevention of fraud, and budget predictability—satisfies the State's burden of justification and insures that the State, in pursuing its asserted objectives, has chosen means that do not unnecessarily impinge on constitutionally protected interests. Pp. 262–269.

108 Ariz. 373, 498 P. 2d 461, reversed and remanded.

MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, STEWART, WHITE, and POWELL, JJ., joined. BURGER, C. J., and BLACKMUN, J., concurred in the result. DOUGLAS, J., filed a separate

opinion, *post*, p. 270. REHNQUIST, J., filed a dissenting opinion, *post*, p. 277.

*Mary M. Schroeder* argued the cause for appellants. With her on the brief was *John P. Frank*.

*William J. Carter III* argued the cause and filed a brief for appellees.*

MR. JUSTICE MARSHALL delivered the opinion of the Court.

This case presents an appeal from a decision of the Arizona Supreme Court upholding an Arizona statute requiring a year's residence in a county as a condition to receiving nonemergency hospitalization or medical care at the county's expense. The constitutional question presented is whether this durational residence requirement is repugnant to the Equal Protection Clause as applied by this Court in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

I

Appellant Henry Evaro is an indigent suffering from a chronic asthmatic and bronchial illness. In early June 1971, Mr. Evaro moved from New Mexico to Phoenix in Maricopa County, Arizona. On July 8, 1971, Evaro had a severe respiratory attack and was sent by his attending physician to appellant Memorial Hospital, a nonprofit private community hospital. Pursuant to the Arizona statute governing medical care for indigents, Memorial notified the Maricopa County Board of Supervisors that it had in its charge an indigent who might qualify for county care and requested that Evaro be transferred to the County's public hospital facility. In accordance with the approved procedures, Memorial also

**Sandor O. Shuch* and *John J. Relihan* filed a brief for the Legal Aid Society of Maricopa County as *amicus curiae* urging reversal.

claimed reimbursement from the County in the amount of $1,202.60, for the care and services it had provided Evaro.

Under Arizona law, the individual county governments are charged with the mandatory duty of providing necessary hospital and medical care for their indigent sick.[1] But the statute requires an indigent to have been a resident of the County for the preceding 12 months in order to be eligible for free nonemergency medical care.[2] Maricopa County refused to admit Evaro to its public hospital or to reimburse Memorial solely because Evaro had not been a resident of the County for the preceding year. Appellees do not dispute that Evaro is an indigent or that he is a bona fide resident of Maricopa County.[3]

This action was instituted to determine whether appellee Maricopa County was obligated to provide medical care for Evaro or was liable to Memorial for the costs it incurred because of the County's refusal to do so. This controversy necessarily requires an adjudication of the constitutionality of the Arizona dura-

[1] Ariz. Rev. Stat. Ann. § 11-291 (Supp. 1973-1974).

[2] Ariz. Rev. Stat. Ann. § 11-297A (Supp. 1973-1974) provides in relevant part that:

"Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, *and that he has been a resident of the county for the preceding twelve months.*" (Emphasis added.)

[3] Thus, the question of the rights of transients to medical care is not presented by this case.

tional residence requirement for providing free medical care to indigents.

The trial court held the residence requirement unconstitutional as a violation of the Equal Protection Clause. In a prior three-judge federal court suit against Pinal County, Arizona, the District Court had also declared the residence requirement unconstitutional and had enjoined its future application in Pinal County. *Valenciano* v. *Bateman*, 323 F. Supp. 600 (Ariz. 1971).[4] Nonetheless, the Arizona Supreme Court upheld the challenged requirement. To resolve this conflict between a federal court and the highest court of the State, we noted probable jurisdiction, 410 U. S. 981 (1973), and we reverse the judgment of the Arizona Supreme Court.

## II

In determining whether the challenged durational residence provision violates the Equal Protection Clause, we must first determine what burden of justification the classification created thereby must meet, by looking to the nature of the classification and the individual interests affected.[5] The Court considered similar durational

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[4] Arizona's intermediate appellate court had also declared the durational residence requirement unconstitutional in *Board of Supervisors, Pima County* v. *Robinson*, 10 Ariz. App. 238, 457 P. 2d 951 (1969), but its decision was vacated as moot by the Arizona Supreme Court. 105 Ariz. 280, 463 P. 2d 536 (1970).

An Arizona one-year durational residence requirement for care at state mental health facilities was declared unconstitutional in *Vaughan* v. *Bower*, 313 F. Supp. 37 (Ariz.), aff'd, 400 U. S. 884 (1970). See n. 11, *infra*.

A Florida one-year durational residence requirement for medical care at public expense was found unconstitutional in *Arnold* v. *Halifax Hospital Dist.*, 314 F. Supp. 277 (MD Fla. 1970), and *Crapps* v. *Duval County Hospital Auth.*, 314 F. Supp. 181 (MD Fla. 1970).

[5] *E. g.*, *Weber* v. *Aetna Cas. & Surety Co.*, 406 U. S. 164, 173 (1972); *Dunn* v. *Blumstein*, 405 U. S. 330, 335 (1972).

residence requirements for welfare assistance in *Shapiro* v. *Thompson*, 394 U. S. 618 (1969). The Court observed that those requirements created two classes of needy residents "indistinguishable from each other except that one is composed of residents who have resided a year or more, and the second of residents who have resided less than a year, in the jurisdiction. On the basis of this sole difference the first class [was] granted and second class [was] denied welfare aid upon which may depend the ability . . . to obtain the very means to subsist—food, shelter, and other necessities of life." *Id.*, at 627. The Court found that because this classification impinged on the constitutionally guaranteed right of interstate travel, it was to be judged by the standard of whether it promoted a compelling state interest.[6] Finding such an interest wanting, the Court held the challenged residence requirements unconstitutional.

Appellees argue that the residence requirement before us is distinguishable from those in *Shapiro*, while appellants urge that *Shapiro* is controlling. We agree with appellants that Arizona's durational residence requirement for free medical care must be justified by a compelling state interest and that, such interests being lacking, the requirement is unconstitutional.

## III

The right of interstate travel has repeatedly been recognized as a basic constitutional freedom.[7] Whatever

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[6] 394 U. S., at 634. See also *id.*, at 642–644 (STEWART, J., concurring).

[7] *Dunn* v. *Blumstein*, *supra*; *Shapiro* v. *Thompson*, 394 U. S. 618 (1969); see *Wyman* v. *Lopez*, 404 U. S. 1055 (1972); *Oregon* v. *Mitchell*, 400 U. S. 112, 237 (1970) (separate opinion of BRENNAN, WHITE, and MARSHALL, JJ.), 285–286 (STEWART, J., concurring and dissenting, with whom BURGER, C. J., and BLACKMUN, J., joined);

its ultimate scope, however, the right to travel was involved in only a limited sense in *Shapiro*. The Court was there concerned only with the right to migrate, "with intent to settle and abide" [8] or, as the Court put it, "to migrate, resettle, find a new job, and start a new life." 394 U. S., at 629. Even a bona fide residence requirement would burden the right to travel, if travel meant merely movement. But, in *Shapiro*, the Court explained that "[t]he residence requirement and the one-year waiting-period requirement are distinct and independent prerequisites" for assistance and only the latter was held to be unconstitutional. *Id.*, at 636. Later, in invalidating a durational residence requirement for voter registration on the basis of *Shapiro*, we cautioned that our decision was not intended to "cast doubt on the validity of appropriately defined and uniformly applied bona fide residence requirements." *Dunn* v. *Blumstein*, 405 U. S. 330, 342 n. 13 (1972).

## IV

The appellees argue that the instant county residence requirement is distinguishable from the state residence requirements in *Shapiro*, in that the former penalizes, not interstate, but rather intrastate, travel. Even were we to draw a constitutional distinction between interstate and

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*Wyman* v. *Bowens*, 397 U. S. 49 (1970); *United States* v. *Guest*, 383 U. S. 745, 757–759 (1966); cf. *Griffin* v. *Breckenridge*, 403 U. S. 88, 105–106 (1971); *Demiragh* v. *DeVos*, 476 F. 2d 403 (CA2 1973). See generally Z. Chafee, Three Human Rights in the Constitution of 1787, pp. 171–181, 187 *et seq.* (1956).

[8] See *King* v. *New Rochelle Municipal Housing Auth.*, 442 F. 2d 646, 648 n. 5 (CA2 1971); *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807, 811 (CA1 1970); *Wellford* v. *Battaglia*, 343 F. Supp. 143, 147 (Del. 1972); cf. *Truax* v. *Raich*, 239 U. S. 33, 39 (1915); Note, *Shapiro* v. *Thompson*: Travel, Welfare and the Constitution, 44 N. Y. U. L. Rev. 989, 1012 (1969).

intrastate travel, a question we do not now consider, such a distinction would not support the judgment of the Arizona court in the case before us. Appellant Evaro has been effectively penalized for his interstate migration, although this was accomplished under the guise of a county residence requirement. What would be unconstitutional if done directly by the State can no more readily be accomplished by a county at the State's direction. The Arizona Supreme Court could have construed the waiting-period requirements to apply to intrastate but not interstate migrants; [9] but it did not do so, and "it is not our function to construe a state statute contrary to the construction given it by the highest court of a State." *O'Brien* v. *Skinner*, 414 U. S. 524, 531 (1974).

V

Although any durational residence requirement impinges to some extent on the right to travel, the Court in *Shapiro* did not declare such a requirement to be *per se* unconstitutional. The Court's holding was conditioned, 394 U. S., at 638 n. 21, by the caveat that some "waiting-period *or* residence requirements . . . may not be penalties upon the exercise of the constitutional right of interstate travel." The amount of impact required to give

[9] Appellees argue that the County should be able to apply a durational residence requirement to preserve the quality of services provided its longtime residents because of their ties to the community and the previous contributions they have made, particularly through past payment of taxes. It would seem inconsistent to argue that the residence requirement should be construed to bar longtime Arizona residents, even if unconstitutional as applied to persons migrating into Maricopa County from outside the State. Surely, longtime residents of neighboring counties have more ties with Maricopa County and equity in its public programs, as through past payment of state taxes, than do migrants from distant States. This "contributory" rationale is discussed, *infra*, at 266.

rise to the compelling-state-interest test was not made clear.[10] The Court spoke of the requisite impact in two ways. First, we considered whether the waiting period would deter migration:

> "An indigent who desires to migrate . . . will doubtless hesitate if he knows that he must risk making the move without the possibility of falling back on state welfare assistance during his first year of residence, when his need may be most acute." *Id.*, at 629.

Second, the Court considered the extent to which the residence requirement served to *penalize* the exercise of the right to travel.

The appellees here argue that the denial of nonemergency medical care, unlike the denial of welfare, is not apt to deter migration; but it is far from clear that the challenged statute is unlikely to have any deterrent effect. A person afflicted with a serious respiratory ailment, particularly an indigent whose efforts to provide a living for his family have been inhibited by his incapacitating illness, might well think of migrating to the clean dry air of Arizona, where relief from his disease could also bring relief from unemployment and poverty. But he may hesitate if he knows that he must make the move without the possibility of falling back on the State for medical care should his condition still plague him or grow more severe during his first year of residence.

It is true, as appellees argue, that there is no evidence in the record before us that anyone was actually deterred from traveling by the challenged restriction. But neither did the majority in *Shapiro* find any reason "to dispute the 'evidence that few welfare recipients have in fact been

[10] For a discussion of the problems posed by this ambiguity, see Judge Coffin's perceptive opinion in *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807 (CA1 1970).

deterred [from moving] by residence requirements.' Indeed, none of the litigants had themselves been deterred." *Dunn*, 405 U. S., at 340 (citations omitted). An attempt to distinguish *Shapiro* by urging that a durational residence requirement for voter registration did not deter travel, was found to be a "fundamental misunderstanding of the law" in *Dunn, supra*, at 339–340.[11]

> "*Shapiro* did not rest upon a finding that denial of welfare actually deterred travel. Nor have other 'right to travel' cases in this Court always relied on the presence of actual deterrence. In *Shapiro* we explicitly stated that the compelling-state-interest test would be triggered by 'any classification which serves to *penalize* the exercise of that right [to travel] . . . .'" (Emphasis in original; footnote omitted.)

Thus, *Shapiro* and *Dunn* stand for the proposition that a classification which "operates to *penalize* those persons . . . who have exercised their constitutional right of interstate migration," must be justified by a compelling state interest. *Oregon* v. *Mitchell*, 400 U. S. 112, 238 (1970) (separate opinion of BRENNAN, WHITE, and MARSHALL, JJ.) (emphasis added). Although any durational residence requirement imposes a potential cost on migration, the Court, in *Shapiro*, cautioned that some

[11] In *Vaughan* v. *Bower*, 313 F. Supp. 37 (Ariz.), aff'd, 400 U. S. 884 (1970), a federal court struck down an Arizona law permitting the director of a state mental hospital to return to the State of his prior residence, any indigent patient who had not been a resident of Arizona for the year preceding his civil commitment. It is doubtful that the challenged law could have had any deterrent effect on migration, since few people consider being committed to a mental hospital when they decide to take up residence in a new State. See also *Affeldt* v. *Whitcomb*, 319 F. Supp. 69 (ND Ind. 1970), aff'd, 405 U. S. 1034 (1972).

"waiting-period[s] . . . may not be penalties." 394 U. S., at 638 n. 21. In *Dunn* v. *Blumstein, supra,* the Court found that the denial of the franchise, "a fundamental political right," *Reynolds* v. *Sims,* 377 U. S. 533, 562 (1964), was a penalty requiring application of the compelling-state-interest test. In *Shapiro,* the Court found denial of the basic "necessities of life" to be a penalty. Nonetheless, the Court has declined to strike down state statutes requiring one year of residence as a condition to lower tuition at state institutions of higher education.[12]

Whatever the ultimate parameters of the *Shapiro* penalty analysis,[13] it is at least clear that medical care is as much "a basic necessity of life" to an indigent as welfare assistance.[14] And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. See, *e. g., Shapiro, supra; Goldberg* v. *Kelly,* 397 U. S. 254, 264 (1970); *Sniadach* v. *Family Finance Corp.,* 395 U. S. 337, 340–342 (1969). It would be odd, indeed, to find that the State of Arizona was required to afford Evaro welfare assistance to keep him from the discomfort of inadequate housing or the pangs of hunger but could deny him the

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[12] See *Vlandis* v. *Kline,* 412 U. S. 441, 452–453, n. 9 (1973).

[13] For example, the *Shapiro* Court cautioned that it meant to "imply no view of the validity of waiting-period *or* residence requirements determining eligibility [*inter alia*] to obtain a license to practice a profession, to hunt or fish, and so forth." 394 U. S., at 638 n. 21.

[14] Dept. of Health, Education, and Welfare (HEW) Report on Medical Resources Available to Meet the Needs of Public Assistance Recipients, House Committee on Ways and Means, 86th Cong., 2d Sess., 74 (Comm. Print 1961). Similarly, President Nixon has observed that "'[i]t is health which is real wealth,' said Ghandi, 'and not pieces of gold and silver.'" Health, Message from the President, 92d Cong., 1st Sess., H. R. Doc. No. 92–49, p. 18 (1971). See also materials cited at n. 4, *supra.*

medical care necessary to relieve him from the wheezing and gasping for breath that attend his illness.[15]

Nor does the fact that the durational residence requirement is inapplicable to the provision of emergency medical care save the challenged provision from constitutional doubt. As the Arizona Supreme Court observed, appellant "Evaro was an indigent person who *required* continued medical care for the preservation of his health and well being . . . ," even if he did not require immediate emergency care.[16] The State could not deny Evaro care

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[15] Reference to the tuition cases is instructive. The lower courts have contrasted in-state tuition with "necessities of life" in a way that would clearly include medical care in the latter category. The District Court in *Starns* v. *Walkerson*, 326 F. Supp. 234, 238 (Minn. 1970), aff'd, 401 U. S. 985 (1971), quoted with approval from *Kirk* v. *Board of Regents*, 273 Cal. App. 2d 430, 440, 78 Cal. Rptr. 260, 266–267 (1969), appeal dismissed, 396 U. S. 554 (1970) (emphasis added):

" 'While we fully recognize the value of higher education, we cannot equate its attainment with food, clothing and shelter. *Shapiro involved the immediate and pressing need for preservation of life and health* of persons unable to live without public assistance, and their dependent children. Thus, the residence requirement in *Shapiro* could cause great suffering and even loss of life. The durational residence requirement for attendance at publicly financed institutions of higher learning do not involve similar risks. Nor was petitioner . . . precluded from the benefit of obtaining higher education. Charging higher tuition fees to non-resident students cannot be equated with granting of basic subsistence to one class of needy residents while denying it to an equally needy class of residents.' "

See also Note, The Constitutionality of Nonresident Tuition, 55 Minn. L. Rev. 1139, 1149–1158 (1971). Moreover, in *Vlandis*, *supra*, the Court observed that "special problems [are] involved in determining the bona fide residence of college students who come from out of State to attend [a] public university . . . ," since those students are characteristically transient, 412 U. S., at 452. There is no such ambiguity about whether appellant Evaro is a bona fide resident of Maricopa County.

[16] 108 Ariz. 373, 374, 498 P. 2d 461, 462 (emphasis added).

just because, although gasping for breath, he was not in immediate danger of stopping breathing altogether. To allow a serious illness to go untreated until it requires emergency hospitalization is to subject the sufferer to the danger of a substantial and irrevocable deterioriation in his health. Cancer, heart disease, or respiratory illness, if untreated for a year, may become all but irreversible paths to pain, disability, and even loss of life. The denial of medical care is all the more cruel in this context, falling as it does on indigents who are often without the means to obtain alternative treatment.[17]

Finally, appellees seek to distinguish *Shapiro* as involving a partially federally funded program. Maricopa County has received federal funding for its public hospital[18] but, more importantly, this Court has held that whether or not a welfare program is federally funded is irrelevant to the applicability of the *Shapiro* analysis. *Pease* v. *Hansen*, 404 U. S. 70 (1971); *Graham* v. *Richardson*, 403 U. S. 365 (1971).

Not unlike the admonition of the Bible that, "Ye shall have one manner of law, as well for the stranger, as for one of your own country," Leviticus 24:22 (King James Version), the right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents. The State of Arizona's durational residence requirement for free medical care penalizes indigents for exercising their right to migrate

[17] See *Valenciano* v. *Bateman*, 323 F. Supp. 600, 603 (Ariz. 1971). See generally HEW Report on Medical Resources, *supra*, n. 14, at 73–74; Dept. of HEW, Human Investment Programs: Delivery of Health Services for the Poor (1967).

[18] See HEW, Hill-Burton Project Register, July 1, 1947–June 30, 1967. HEW Publication No. (HSM) 72–4011, p. 37. Maricopa County has received over $2 million in Hill-Burton (42 U. S. C. § 291 *et seq.*) funds since 1947.

to and settle in that State.[19] Accordingly, the classification created by the residence requirement, "unless shown to be necessary to promote a *compelling* governmental interest, is unconstitutional." *Shapiro*, 394 U. S., at 634. (Emphasis in original.)

## VI

We turn now to the question of whether the State has shown that its durational residence requirement is "legitimately defensible," [20] in that it furthers a compelling state interest.[21] A number of purposes are asserted to be served by the requirement and we must

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[19] Medicaid, the primary federal program for providing medical care to indigents at public expense, does not permit participating States to apply a durational residence requirement as a condition to eligibility, 42 U. S. C. § 1396a (b)(3), and "this conclusion of a coequal branch of Government is not without significance." *Frontiero* v. *Richardson*, 411 U. S. 677, 687–688 (1973). The State of Arizona does not participate in the Medicaid program.

[20] Cf. Ely, Legislative and Administrative Motivation in Constitutional Law, 79 Yale L. J. 1205, 1223–1224 (1970); Note, Developments in the Law—Equal Protection, 82 Harv. L. Rev. 1065, 1076–1077 (1969).

[21] The Arizona Supreme Court observed that because this case involves a governmental benefit akin to welfare, the "reasonable basis" test of *Dandridge* v. *Williams*, 397 U. S. 471 (1970), should apply. In upholding a state regulation placing an absolute limit on the amount of welfare assistance to be paid a dependent family regardless of size or actual need, the Court in *Dandridge* found it "enough that the State's action be rationally based and free from invidious discrimination." *Id.*, at 487. The Court later distinguished *Dandridge* in *Graham* v. *Richardson*, 403 U. S. 365, 376 (1971), where MR. JUSTICE BLACKMUN, writing for the Court, observed that "[a]ppellants' attempted reliance on *Dandridge* . . . is also misplaced, since the classification involved in that case [did not impinge] upon a fundamental constitutional right . . . ." Strict scrutiny is required here because the challenged classification impinges on the right of interstate travel. Compare *Dandridge*, *supra*, at 484 n. 16, with *Shapiro* v. *Thompson*, *supra*.

determine whether these satisfy the appellees' heavy burden of justification, and insure that the State, in pursuing its asserted objectives, has chosen means that do not unnecessarily burden constitutionally protected interests. *NAACP* v. *Button*, 371 U. S. 415, 438 (1963).

A

The Arizona Supreme Court observed that:

> "Absent a residence requirement, any indigent sick person . . . could seek admission to [Maricopa County's] hospital, the facilities being the newest and most modern in the state, and the resultant volume would cause long waiting periods or severe hardship on [the] county if it tried to tax its property owners to support [these] indigent sick . . . ." 108 Ariz., at 376, 498 P. 2d, at 464.

The County thus attempts to sustain the requirement as a necessary means to insure the fiscal integrity of its free medical care program by discouraging an influx of indigents, particularly those entering the County for the sole purpose of obtaining the benefits of its hospital facilities.

First, a State may not protect the public fisc by drawing an invidious distinction between classes of its citizens, *Shapiro, supra*, at 633, so appellees must do more than show that denying free medical care to new residents saves money. The conservation of the taxpayers' purse is simply not a sufficient state interest to sustain a durational residence requirement which, in effect, severely penalizes exercise of the right to freely migrate and settle in another State. See *Rivera* v. *Dunn*, 329 F. Supp. 554 (Conn. 1971), aff'd, 404 U. S. 1054 (1972).

Second, to the extent the purpose of the requirement is to inhibit the immigration of indigents gen-

erally, that goal is constitutionally impermissible.[22] And, to the extent the purpose is to deter only those indigents who take up residence in the County solely to utilize its new and modern public medical facilities, the requirement at issue is clearly overinclusive. The challenged durational residence requirement treats every indigent, in his first year of residence, as if he came to the jurisdiction solely to obtain free medical care. Such a classification is no more defensible than the waiting period in *Shapiro, supra*, of which the Court said:

> "[T]he class of barred newcomers is all-inclusive, lumping the great majority who come to the State for other purposes with those who come for the sole purpose of collecting higher benefits." 394 U. S., at 631.

Moreover, "a State may no more try to fence out those indigents who seek [better public medical facilities] than it may try to fence out indigents generally." *Id.*, at 631. An indigent who considers the quality of public hospital facilities in entering the State is no less deserving than one who moves into the State in order to take advantage of its better educational facilities. *Id.*, at 631–632.

It is also useful to look at the other side of the coin—at who will bear the cost of indigents' illnesses if the County does not provide needed treatment. For those newly arrived residents who do receive at least hospital care, the cost is often borne by private nonprofit hospitals, like appellant Memorial—many of which are already in precarious financial straits.[23] When absorbed

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[22] *Shapiro* v. *Thompson*, 394 U. S., at 629.

[23] See Cantor, The Law and Poor People's Access to Health Care, 35 Law & Contemp. Prob. 901, 909–914 (1970); cf. *Catholic Medical Center* v. *Rockefeller*, 305 F. Supp. 1256 and 1268 (EDNY 1969), vacated and remanded, 397 U. S. 820, aff'd on remand, 430 F. 2d 1297, appeal dismissed, 400 U. S. 931 (1970).

by private hospitals, the costs of caring for indigents must be passed on to paying patients and "at a rather inconvenient time"—adding to the already astronomical costs of hospitalization which bear so heavily on the resources of most Americans.[24] The financial pressures under which private nonprofit hospitals operate have already led many of them to turn away patients who cannot pay or to severely limit the number of indigents they will admit.[25] And, for those indigents who receive no care, the cost is, of course, borne by their own suffering.

In addition, the County's claimed fiscal savings may well be illusory. The lack of timely medical care could cause a patient's condition to deteriorate to a point where more expensive emergency hospitalization (for which no durational residence requirement applies) is needed. And, the disability that may result from letting an untreated condition deteriorate may well result in the patient and his family becoming a burden on the State's welfare rolls for the duration of his emergency care, or permanently, if his capacity to work is impaired.[26]

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[24] HEW Report on Medical Resources, *supra*, n. 14, at 74. See generally Health, Message from the President, *supra*, n. 14; E. Kennedy, In Critical Condition: The Crises in America's Health Care (1973); Hearings on The Health Care Crisis in America before the Subcommittee on Health of the Senate Committee on Labor and Public Welfare, 92d Cong., 1st Sess. (1971).

[25] Cantor, *supra*, n. 23; See E. Kennedy, *supra*, n. 24, at 78–94; Note, Working Rules for Assuring Nondiscrimination in Hospital Administration, 74 Yale L. J. 151, 156 n. 32 (1964); cf., *e. g.*, *Stanturf* v. *Sipes*, 447 S. W. 2d 558 (Mo. 1969) (hospital refused treatment to frostbite victim who was unable to pay $25 deposit). See generally HEW Report on Medical Resources, *supra*, n. 14, at 74; Hearings on The Health Care Crisis in America, *supra*, n. 24.

[26] "[L]ack of timely hospitalization and medical care for those unable to pay has been considered an economic liability to the patient, the hospital, and to the community in which these citizens

The appellees also argue that eliminating the durational residence requirement would dilute the quality of services provided to longtime residents by fostering an influx of newcomers and thus requiring the County's limited public health resources to serve an expanded pool of recipients. Appellees assert that the County should be able to protect its longtime residents because of their contributions to the community, particularly through the past payment of taxes. We rejected this "contributory" rationale both in *Shapiro* and in *Vlandis* v. *Kline*, 412 U. S. 441, 450 n. 6 (1973), by observing that:

> "[Such] reasoning would logically permit the State to bar new residents from schools, parks, and libraries or deprive them of police and fire protection. Indeed it would permit the State to apportion all benefits and services according to the past tax contributions of its citizens. The Equal Protection Clause prohibits such an apportionment of state services." *Shapiro*, 394 U. S., at 632–633 (footnote omitted).

Appellees express a concern that the threat of an influx of indigents would discourage "the development of modern and effective [public medical] facilities." It is suggested that whether or not the durational residence requirement actually deters migration, the voters think that it protects them from low income families' being attracted by the county hospital; hence, the requirement is necessary for public support of that medical facility. A State may not employ an invidious discrimination to sustain the political viability of its programs. As we

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might otherwise be self-supporting . . . ." HEW Report on Medical Resources, *supra*, n. 14, at 73; Comment, Indigents, Hospital Admissions and Equal Protection, 5 U. Mich. J. L. Reform 502, 515–516 (1972); cf. Battistella & Southby, Crisis in American Medicine, The Lancet 581, 582 (Mar. 16, 1968).

observed in *Shapiro, supra*, at 641, "[p]erhaps Congress could induce wider state participation in school construction if it authorized the use of joint funds for the building of segregated schools," but that purpose would not sustain such a scheme. See also *Cole* v. *Housing Authority of the City of Newport*, 435 F. 2d 807, 812–813 (CA1 1970).

B

The appellees also argue that the challenged statute serves some administrative objectives. They claim that the one-year waiting period is a convenient rule of thumb to determine bona fide residence. Besides not being factually defensible, this test is certainly overbroad to accomplish its avowed purpose. A mere residence requirement would accomplish the objective of limiting the use of public medical facilities to bona fide residents of the County without sweeping within its prohibitions those bona fide residents who had moved into the State within the qualifying period. Less drastic means, which do not impinge on the right of interstate travel, are available and employed [27] to ascertain an individual's true intentions, without exacting a protracted waiting period which may have dire economic and health consequences for certain citizens. See *Shelton* v. *Tucker*, 364 U. S. 479, 488 (1960). The Arizona State welfare agency applies criteria other than the duration of residency to determine whether an applicant is a bona fide resident.[28] The Arizona Medical Assistance to the Aged law provides public medical care for certain senior citizens, conditioned only on residence.[29] Pinal County, Arizona, has operated its public hospital without benefit of the

[27] See *Green* v. *Dept. of Public Welfare of Delaware*, 270 F. Supp. 173, 177–178 (Del. 1967).

[28] Ariz. Rev. Stat. Ann. § 46-292 (1) (Supp. 1973–1974).

[29] Ariz. Rev. Stat. Ann. § 46-261.02 (3) (Supp. 1973–1974).

durational residence requirement since the application of the challenged statute in that County was enjoined by a federal court in *Valenciano* v. *Bateman*, 323 F. Supp. 600 (Ariz. 1971).[39]

The appellees allege that the waiting period is a useful tool for preventing fraud. Certainly, a State has a valid interest in preventing fraud by any applicant for medical care, whether newcomer or oldtime resident, *Shapiro*, 394 U. S., at 637, but the challenged provision is ill-suited to that purpose. An indigent applicant, intent on committing fraud, could as easily swear to having been a resident of the county for the preceding year as to being one currently. And, there is no need for the State to rely on the durational requirement as a safeguard against fraud when other mechanisms to serve that purpose are available which would have a less drastic impact on constitutionally protected interests. *NAACP* v. *Button*, 371 U. S. 415, 438 (1963). For example, state law makes it a crime to file an "untrue statement . . . for the purpose of obtaining hospitalization, medical care or outpatient relief" at county expense. Ariz. Rev. Stat. Ann. § 11-297C (Supp. 1973-1974). See *Dunn*, 405 U. S., at 353-354; *U. S. Dept. of Agriculture* v. *Moreno*, 413 U. S. 528, 534 (1973).

Finally, appellees assert that the waiting period is necessary for budget predictability, but what was said in *Shapiro* is equally applicable to the case before us:

"The records . . . are utterly devoid of evidence that

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[39] In addition, Pima County, Arizona, did not apply the durational residence requirement between August 1969, when the requirement was found unconstitutional by the Arizona Court of Appeals, *Board of Supervisors, Pima County* v. *Robinson*, 10 Ariz. App. 238, 457 P. 2d 951 (1969), and September 1970, when that judgment was vacated as moot by the Arizona Supreme Court, 105 Ariz. 280, 463 P. 2d 536 (1970).

> [the County] uses the one-year requirement as a means to predict the number of people who will require assistance in the budget year. [The appellees do not take] a census of new residents . . . . Nor are new residents required to give advance notice of their need for . . . assistance. Thus, the . . . authorities cannot know how many new residents come into the jurisdiction in any year, much less how many of them will require public assistance." 394 U. S., at 634–635 (footnote omitted).

Whatever the difficulties in projecting how many newcomers to a jurisdiction will require welfare assistance, it could only be an even more difficult and speculative task to estimate how many of those indigent newcomers will require medical care during their first year in the jurisdiction. The irrelevance of the one-year residence requirement to budgetary planning is further underscored by the fact that *emergency* medical care for all newcomers and more complete medical care for the aged are currently being provided at public expense regardless of whether the patient has been a resident of the County for the preceding year. See *Shapiro, supra,* at 635.

## VII

The Arizona durational residence requirement for eligibility for nonemergency free medical care creates an "invidious classification" that impinges on the right of interstate travel by denying newcomers "basic necessities of life." Such a classification can only be sustained on a showing of a compelling state interest. Appellees have not met their heavy burden of justification, or demonstrated that the State, in pursuing legitimate objectives, has chosen means which do not unnecessarily impinge on constitutionally protected interests. Accordingly, the judgment of the Supreme Court of Arizona is reversed and

the case remanded for further action not inconsistent with this opinion.

*So ordered.*

THE CHIEF JUSTICE and MR. JUSTICE BLACKMUN concur in the result.

MR. JUSTICE DOUGLAS.

The legal and economic aspects of medical care [1] are enormous; and I doubt if decisions under the Equal Protection Clause of the Fourteenth Amendment are equal to the task of dealing with these matters. So far as interstate travel *per se* is considered, I share the doubts of my Brother REHNQUIST. The present case, however, turns for me on a different axis. The problem has many aspects. The therapy of Arizona's atmosphere brings many there who suffer from asthma, bronchitis, arthritis, and tuberculosis. Many coming are indigent or become indigent after arrival. Arizona does not deny medical help to "emergency" cases "when immediate hospitalization or medical care is necessary for the preservation of life or limb," Ariz. Rev. Stat. Ann. § 11–297A (Supp. 1973–1974). For others, it requires a 12-month durational residence.

The Act is not aimed at interstate travelers; it applies even to a long-term resident who moves from one county to another. As stated by the Supreme Court of Arizona in the present case: "The requirement applies to all citizens within the state including long term residents of one county who move to another county. Thus, the classification does not single out non-residents nor attempt to penalize interstate travel. The requirement is uniformly applied." 108 Ariz. 373, 375, 498 P. 2d 461, 463.

[1] See appendix to this opinion, *post*, p. 2274.

What Arizona has done, therefore, is to fence the poor out of the metropolitan counties, such as Maricopa County (Phoenix) and Pima County (Tucson) by use of a durational residence requirement. We are told that eight Arizona counties have no county hospitals, that most indigent care in those areas exists only on a contract basis. In *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, we had a case where Texas created a scheme by which school districts with a low property tax base, from which they could raise only meager funds, offered a lower quality of education to their students than the wealthier districts. That system was upheld against the charge that the state system violated the Equal Protection Clause. It was a closely divided Court and I was in dissent. I suppose that if a State can fence in the poor in educational programs, it can do so in medical programs. But to allow Arizona freedom to carry forward its medical program we must go one step beyond the *San Antonio* case. In the latter there was no legal barrier to movement into a better district. Here a one-year barrier to medical care, save for "emergency" care, is erected around the areas that have medical facilities for the poor.

Congress has struggled with the problem. In the Kerr-Mills Act of 1960, 74 Stat. 987, 42 U. S. C. § 302 (b)(2), it added provisions to the Social Security Act requiring the Secretary of Health, Education, and Welfare to disapprove any state plan for medical assistance to the aged (Medicaid) that excludes "any individual who resides in the state," thus eliminating durational residence requirements.

Maricopa County has received over two million dollars in federal funds for hospital construction under the Hill-Burton Act, 42 U. S. C. § 291 *et seq.* Section 291c (e) authorizes the issuance of regulations governing the op-

eration of Hill-Burton facilities. The regulations contain conditions that the facility to be constructed or modernized with the funds "will be made available to all persons residing in the territorial area of the applicant" and that the applicant will render "a reasonable volume of services to persons unable to pay therefor." [2] The conditions of free services for indigents, however, may be waived if "not feasible from a financial viewpoint."

Prior to the application the state agency must obtain from the applicant an assurance "that there will be made available in the facility or portion thereof to be constructed or modernized a reasonable volume of services to persons unable to pay therefor. The requirement of an assurance from an applicant shall be waived if the applicant demonstrates to the satisfaction of the State agency, subject to subsequent approval by the Secretary, that such a requirement is not feasible from a financial viewpoint." 42 CFR § 53.111 (c)(1).[3]

So far as I can ascertain, the durational residence requirement imposed by Maricopa County has not been federally approved as a condition to the receipt of Hill-Burton funds.

Maricopa County does argue that it is not financially feasible to provide free nonemergency medical care to new residents. Even so, the federal regulatory framework does not leave the County uncontrolled in determining which indigents will receive the benefit of the resources which are available. It is clear, for example, that the County could not limit such service to whites out of

[2] Title 42 CFR § 53.111 (b)(8) defines that term to mean "a level of uncompensated services which meets a need for such services in the area served by an applicant and which is within the financial ability of such applicant to provide."

[3] The waiver of such a requirement requires notice and opportunity for public hearing. 42 CFR § 53.111 (c)(2).

a professed inability to service indigents of all races because 42 CFR § 53.112 (c) prohibits such discrimination in the operation of Hill-Burton facilities. It does not allow racial discrimination even against transients.

Moreover, Hill-Burton Act donees are guided by 42 CFR § 53.111 (g), which sets out in some detail the criteria which must be used in identifying persons unable to pay for such services. The criteria include the patient's health and medical insurance coverage, personal and family income, financial obligations and resources, and "similar factors." Maricopa County, pursuant to the state law here challenged, employs length of county residence as an additional criterion in identifying indigent recipients of uncompensated nonemergency medical care. The federal regulations, however, do not seem to recognize that as an acceptable criterion.

And, as we held in *Thorpe* v. *Housing Authority*, 393 U. S. 268; *Mourning* v. *Family Publications Service*, 411 U. S. 356, these federal conditions attached to federal grants are valid when "reasonably related to the purposes of the enabling legislation." 393 U. S., at 280–281.

It is difficult to impute to Congress approval of the durational residence requirement, for the implications of such a decision would involve weighty equal protection considerations by which the Federal Government, *Bolling* v. *Sharpe*, 347 U. S. 497, as well as the States, are bound.

The political processes[4] rather than equal protection litigation are the ultimate solution of the present problem. But in the setting of this case the invidious discrimination against the poor, *Harper* v. *Virginia Board*

[4] For the impact of "free" indigent care on private hospitals and their paying patients see Dept. of HEW, Medical Resources Available to Meet the Needs of Public Assistance Recipients, House Committee on Ways and Means, 86th Cong., 2d Sess. (Comm. Print 1961).

*of Elections*, 383 U. S. 663, not the right to travel interstate, is in my view the critical issue.

## APPENDIX TO OPINION OF DOUGLAS, J.

### GOURMAND AND FOOD—A FABLE [5]

*The people of Gourmand loved good food. They ate in good restaurants, donated money for cooking research, and instructed their government to safeguard all matters having to do with food. Long ago, the food industry had been in total chaos. There were many restaurants, some very small. Anyone could call himself a chef or open a restaurant. In choosing a restaurant, one could never be sure that the meal would be good. A commission of distinguished chefs studied the situation and recommended that no one be allowed to touch food except for qualified chefs. "Food is too important to be left to amateurs," they said. Qualified chefs were licensed by the state with severe penalties for anyone else who engaged in cooking. Certain exceptions were made for food preparation in the home, but a person could serve only his own family. Furthermore, to become a qualified chef, a man had to complete at least twenty-one years of training (including four years of college, four years of cooking school, and one year of apprenticeship). All cooking schools had to be first class.*

*These reforms did succeed in raising the quality of cooking. But a restaurant meal became substantially more expensive. A second commission observed that not everyone could afford to eat out. "No one," they said, "should be denied a good meal because of his*

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[5] Foreword to an article on Medical Care and its Delivery: An Economic Appraisal by Judith R. Lave and Lester B. Lave in 35 Law & Contemp. Prob. 252 (1970).

*income." Furthermore, they argued that chefs should work toward the goal of giving everyone "complete physical and psychological satisfaction." For those people who could not afford to eat out, the government declared that they should be allowed to do so as often as they liked and the government would pay. For others, it was recommended that they organize themselves in groups and pay part of their income into a pool that would undertake to pay the costs incurred by members in dining out. To insure the greatest satisfaction, the groups were set up so that a member could eat out anywhere and as often as he liked, could have as elaborate a meal as he desired, and would have to pay nothing or only a small percentage of the cost. The cost of joining such prepaid dining clubs rose sharply.*

*Long ago, most restaurants would have one chef to prepare the food. A few restaurants were more elaborate, with chefs specializing in roasting, fish, salads, sauces, and many other things. People rarely went to these elaborate restaurants since they were so expensive. With the establishment of prepaid dining clubs, everyone wanted to eat at these fancy restaurants. At the same time, young chefs in school disdained going to cook in a small restaurant where they would have to cook everything. The pay was higher and it was much more prestigious to specialize and cook at a really fancy restaurant. Soon there were not enough chefs to keep the small restaurants open.*

*With prepaid clubs and free meals for the poor, many people started eating their three-course meals at the elaborate restaurants. Then they began to increase the number of courses, directing the chef to "serve the best with no thought for the bill." (Recently a 317-course meal was served.)*

*The costs of eating out rose faster and faster. A new*

*government commission reported as follows: (1) Noting that licensed chefs were being used to peel potatoes and wash lettuce, the commission recommended that these tasks be handed over to licensed dishwashers (whose three years of dishwashing training included cooking courses) or to some new category of personnel. (2) Concluding that many licensed chefs were overworked, the commission recommended that cooking schools be expanded, that the length of training be shortened, and that applicants with lesser qualifications be admitted. (3) The commission also observed that chefs were unhappy because people seemed to be more concerned about the decor and service than about the food. (In a recent taste test, not only could one patron not tell the difference between a 1930 and a 1970 vintage but he also could not distinguish between white and red wines. He explained that he always ordered the 1930 vintage because he knew that only a really good restaurant would stock such an expensive wine.)*

*The commission agreed that weighty problems faced the nation. They recommended that a national prepayment group be established which everyone must join. They recommended that chefs continue to be paid on the basis of the number of dishes they prepared. They recommended that every Gourmandese be given the right to eat anywhere he chose and as elaborately as he chose and pay nothing.*

*These recommendations were adopted. Large numbers of people spent all of their time ordering incredibly elaborate meals. Kitchens became marvels of new, expensive equipment. All those who were not consuming restaurant food were in the kitchen preparing it. Since no one in Gourmand did anything except prepare or eat meals, the country collapsed.*

MR. JUSTICE REHNQUIST, dissenting.

## I

The State of Arizona provides free medical care for indigents. Confronted, in common with its 49 sister States, with the assault of spiraling health and welfare costs upon limited state resources, it has felt bound to require that recipients meet three standards of eligibility.[1] First, they must be indigent, unemployable, or unable to provide their own care. Second, they must be residents of the county in which they seek aid. Third, they must have maintained their residence for a period of one year. These standards, however, apply only to persons seeking nonemergency aid. An exception is specifically provided for "emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb . . . ."

Appellant Evaro moved from New Mexico to Arizona in June 1971, suffering from a "chronic asthmatic and bronchial illness." In July 1971 he experienced a respiratory attack, and obtained treatment at the facilities of appellant Memorial Hospital, a privately operated

[1] Ariz. Rev. Stat. Ann. § 11-297A (Supp. 1973-1974) reads as follows:

"Except in emergency cases when immediate hospitalization or medical care is necessary for the preservation of life or limb no person shall be provided hospitalization, medical care or outpatient relief under the provisions of this article without first filing with a member of the board of supervisors of the county in which he resides a statement in writing, subscribed and sworn to under oath, that he is an indigent as shall be defined by rules and regulations of the state department of economic security, an unemployable totally dependent upon the state or county government for financial support, or an employable of sworn low income without sufficient funds to provide himself necessary hospitalization and medical care, and that he has been a resident of the county for the preceding twelve months."

institution. The hospital sought to recover its expenses from appellee Maricopa County under the provisions of Ariz. Rev. Stat. Ann. § 11–297A (Supp. 1973–1974), asserting that Evaro was entitled to receive county care. Since he did not satisfy the eligibility requirements discussed above,[2] appellee declined to assume responsibility for his care, and this suit was then instituted in the state superior court.

Appellants did not, and could not, claim that there is a constitutional right to nonemergency medical care at state or county expense or a constitutional right to reimbursement for care extended by a private hospital.[3] They asserted, however, that the state legislature, having decided to give free care to certain classes of persons, must give that care to Evaro as well. The Court upholds that claim, holding that the Arizona eligibility requirements burdened Evaro's "right to travel."

Unlike many traditional government services, such as police or fire protection, the provision of health care has commonly been undertaken by private facilities and personnel. But as strains on private services become greater, and the costs of obtaining care increase, federal, state, and local governments have been pressed to assume a larger role. Reasonably enough, it seems to me, those governments which now find themselves in the hospital business seek to operate that business primarily for those

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[2] The parties stipulated that Mr. Evaro was "an indigent who recently changed his residence from New Mexico to Arizona and who has resided in the state of Arizona for less than twelve months." App. 10. Therefore Mr. Evaro failed to meet only the third requirement discussed in the text.

[3] This Court has noted that citizens have no constitutional right to welfare benefits. See, *e. g.*, *Dandridge* v. *Williams*, 397 U. S. 471 (1970); *San Antonio Independent School Dist.* v. *Rodriguez*, 411 U. S. 1, 33 (1973).

persons dependent on the financing locality both by association and by need.

Appellants in this case nevertheless argue that the State's efforts, admirable though they may be, are simply not impressive enough. But others excluded by eligibility requirements certainly could make similar protests. Maricopa County residents of many years, paying taxes to both construct and support public hospital facilities, may be ineligible for care because their incomes are slightly above the marginal level for inclusion. These people have been excluded by the State, not because their claim on limited public resources is without merit, but because it has been deemed less meritorious than the claims of those in even greater need. Given a finite amount of resources, Arizona after today's decision may well conclude that its indigency threshold should be elevated since its counties must provide for out-of-state migrants as well as for residents of longer standing. These more stringent need requirements would then deny care to additional persons who until now would have qualified for aid.

Those presently excluded because marginally above the State's indigency standards, those who may be excluded in the future because of more stringent indigency requirements necessitated by today's decision, and appellant Evaro, all have a plausible claim to government-supported medical care. The choice between them necessitated by a finite amount of resources is a classic example of the determination of priorities to be accorded conflicting claims, and would in the recent past have been thought to be a matter particularly within the competence of the state legislature to decide. As this Court stated in *Dandridge* v. *Williams*, 397 U. S. 471, 487 (1970), "the Constitution does not empower this Court to second-guess state officials charged with the difficult

responsibility of allocating limited public welfare funds among the myriad of potential recipients."

The Court holds, however, that the State was barred from making the choice it made because of the burden its choice placed upon Evaro's "right to travel." Although the Court's definition of this "right" is hardly precise, the Court does state: "[T]he right of interstate travel must be seen as insuring new residents the same right to vital government benefits and privileges in the States to which they migrate as are enjoyed by other residents." This rationale merits further attention.

## II

The right to travel throughout the Nation has been recognized for over a century in the decisions of this Court.[4] See *Crandall* v. *Nevada*, 6 Wall. 35 (1868). But the concept of that right has not been static. To see how distant a cousin the right to travel enunciated in this case is to the right declared by the Court in *Crandall*, reference need only be made to the language of Mr. Justice Miller, speaking for the Court:

> "But if the government has these rights on her own account, the citizen also has correlative rights. He has the right to come to the seat of government to assert any claim he may have upon that government, or to transact any business he may have with it. To seek its protection, to share its offices, to engage in administering its functions. He has a right to free access to its sea-ports, through which all the operations of foreign trade and commerce are

[4] Although the right to travel has been recognized by this Court for over a century, the origin of the right still remains somewhat obscure. The majority opinion in this case makes no effort to identify the source, simply relying on recent cases which state such a right exists.

> conducted, to the sub-treasuries, the land offices, the revenue offices, and the courts of justice in the several States, and this right is in its nature independent of the will of any State over whose soil he must pass in the exercise of it." *Id.*, at 44.

The Court in *Crandall* established no right to free benefits from every State through which the traveler might pass, but more modestly held that the State could not use its taxing power to impede travel across its borders.[5]

Later cases also defined this right to travel quite conservatively. For example, in *Williams* v. *Fears*, 179 U. S. 270 (1900), the Court upheld a Georgia statute taxing "emigrant agents"—persons hiring labor for work *outside* the State—although agents hiring for local work went untaxed. The Court recognized that a right to travel existed, stating:

> "Undoubtedly the right of locomotion, the right to remove from one place to another according to inclination, is an attribute of personal liberty, and the right, ordinarily, of free transit from or through the territory of any State is a right secured by the Fourteenth Amendment and by other provisions of the Constitution." *Id.*, at 274.

The Court went on, however, to decide that the statute, despite the added cost it assessed against exported labor, affected freedom of egress "only incidentally and remotely." *Ibid.*[6]

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[5] The tax levied by the State of Nevada was upon every person leaving the State. As this Court has since noted, the tax was a direct tax on travel and was not intended to be a charge for the use of state facilities. See *Evansville Airport* v. *Delta Airlines*, 405 U. S. 707 (1972).

[6] The Court also rejected an equal protection argument, concluding: "We are unable to say that such a discrimination, if it existed,

The leading earlier case, *Edwards* v. *California*, 314 U. S. 160 (1941), provides equally little support for the Court's expansive holding here. In *Edwards* the Court invalidated a California statute which subjected to criminal penalties any person "that brings or assists in bringing into the State any indigent person who is not a resident of the State, knowing him to be an indigent person." *Id.*, at 171. Five members of the Court found the statute unconstitutional under the Commerce Clause, finding in the Clause a "prohibition against attempts on the part of any single State to isolate itself from difficulties common to all of them by restraining the transportation of persons and property across its borders." *Id.*, at 173. Four concurring Justices found a better justification for the result in the Fourteenth Amendment's protection of the "privileges of national citizenship." [7]

Regardless of the right's precise source and definition, it is clear that the statute invalidated in *Edwards* was specifically designed to, and would, deter indigent persons from entering the State of California. The imposition of criminal penalties on all persons assisting the entry of an indigent served to block ingress as surely as if the State had posted guards at the border to turn indigents away. It made no difference to the operation of the statute that the indigent, once inside the State, would be supported by federal payments.[8] Furthermore,

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did not rest on reasonable grounds, and was not within the discretion of the state legislature." 179 U. S., at 276.

[7] See the concurring opinions of MR. JUSTICE DOUGLAS (with whom Mr. Justice Black and Mr. Justice Murphy joined), 314 U. S., at 177, and Mr. Justice Jackson, *id.*, at 181.

[8] The Court in *Edwards* observed: "After arriving in California [the indigent] was aided by the Farm Security Administration, which . . . is wholly financed by the Federal government." 314 U. S., at 175. The Court did not express a view at that time as to whether a different result would have been reached if the State bore the financial burden. But cf. *Shapiro* v. *Thompson*, 394 U. S. 618 (1969).

the statute did not require that the indigent intend to take up continuous residence within the State. The statute was not therefore an incidental or remote barrier to migration, but was in fact an effective and purposeful attempt to insulate the State from indigents.

The statute in the present case raises no comparable barrier. Admittedly, some indigent persons desiring to reside in Arizona may choose to weigh the possible detriment of providing their own nonemergency health care during the first year of their residence against the total benefits to be gained from continuing location within the State, but their mere entry into the State does not invoke criminal penalties. To the contrary, indigents are free to live within the State, to receive welfare benefits necessary for food and shelter,[*] and to receive free emergency medical care if needed. Furthermore, once the indigent has settled within a county for a year, he becomes eligible for full medical care at county expense. To say, therefore, that Arizona's treatment of indigents compares with California's treatment during the 1930's would border on the frivolous.

Since those older cases discussing the right to travel are unhelpful to Evaro's cause here, reliance must be placed elsewhere. A careful reading of the Court's opinion discloses that the decision rests almost entirely on two cases of recent vintage: *Shapiro* v. *Thompson*, 394 U. S. 618 (1969), and *Dunn* v. *Blumstein*, 405 U. S. 330 (1972). In *Shapiro* the Court struck down statutes requiring one year's residence prior to receiving welfare benefits. In *Dunn* the Court struck down a statute requiring a year's residence before receiving the right to vote. In placing reliance on these two cases, the Court

[*] See Ariz. Rev. Stat. Ann. § 46-233 (Supp. 1973-1974), which provides that an eligible recipient of general assistance must have "established residence at the time of application."

must necessarily distinguish or discredit recent cases of this Court upholding statutes requiring a year's residence for lower in-state tuition.[10] The important question for this purpose, according to the Court's analysis, is whether a classification " 'operates to *penalize* those persons . . . who have exercised their constitutional right of interstate migration.' " (Emphasis in Court's opinion.)

Since the Court concedes that "some 'waiting-period[s] . . . may not be penalties,' " *ante*, at 258–259, one would expect to learn from the opinion how to distinguish a waiting period which is a penalty from one which is not. Any expense imposed on citizens crossing state lines but not imposed on those staying put could theoretically be deemed a penalty on travel; the toll exacted from persons crossing from Delaware to New Jersey by the Delaware Memorial Bridge is a "penalty" on interstate travel in the most literal sense of all. But such charges,[11] as well as other fees for use of transportation facilities such as taxes on airport users,[12] have been upheld by this Court against attacks based upon the right to travel. It seems to me that the line to be derived from our prior cases is that some financial impositions on interstate travelers have such indirect or inconsequential impact on travel that they simply do not constitute the type of direct purposeful barriers struck down in *Edwards* and *Shapiro*. Where the impact is that remote, a State can reasonably require that the citizen bear some proportion of the State's cost in its facilities. I would think that this standard is not only supported by this Court's decisions, but would be

[10] See *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U. S. 985 (1971); *Vlandis* v. *Kline*, 412 U. S. 441 (1973).

[11] See, *e. g.*, *Interstate Busses Corp.* v. *Blodgett*, 276 U. S. 245 (1928); *Hendrick* v. *Maryland*, 235 U. S. 610 (1915).

[12] See *Evansville Airport* v. *Delta Airlines*, 405 U. S. 707 (1972).

eminently sensible and workable. But the Court not only rejects this approach, it leaves us entirely without guidance as to the proper standard to be applied.

The Court instead resorts to *ipse dixit*, declaring rather than demonstrating that the right to nonemergency medical care is within the class of rights protected by *Shapiro* and *Dunn:*

> "Whatever the ultimate parameters of the *Shapiro* penalty analysis, *it is at least clear that medical care is as much 'a basic necessity of life' to an indigent as welfare assistance.* And, governmental privileges or benefits necessary to basic sustenance have often been viewed as being of greater constitutional significance than less essential forms of governmental entitlements. See, *e. g., Shapiro, supra; Goldberg* v. *Kelly*, 397 U. S. 254, 264 (1970); *Sniadach* v. *Family Finance Corp.*, 395 U. S. 337, 340–342 (1969)." *Ante*, at 259. (Emphasis added; footnotes omitted.)

However clear this conclusion may be to the majority, it is certainly not clear to me. The solicitude which the Court has shown in cases involving the right to vote,[13] and the virtual denial of entry inherent in denial of welfare benefits—"the very means by which to live," *Goldberg* v. *Kelly*, 397 U. S. 254, 264 (1970)—ought not be so casually extended to the alleged deprivation here. Rather, the Court should examine, as it has done in the past, whether the challenged requirement erects a real and purposeful barrier to movement, or the threat of such a barrier, or whether the effects on travel, viewed realistically, are merely incidental and remote. As the above discussion has shown, the barrier here is hardly

[13] See, *e. g., Evans* v. *Cornman*, 398 U. S. 419 (1970); *Cipriano* v. *City of Houma*, 395 U. S. 701 (1969).

a counterpart to the barriers condemned in earlier cases. That being so, the Court should observe its traditional respect for the State's allocation of its limited financial resources rather than unjustifiably imposing its own preferences.

## III

The Court, in its examination of the proffered state interests, categorically rejects the contention that those who have resided in the county for a fixed period of time may have a greater stake in community facilities than the newly arrived. But this rejection is accomplished more by fiat than by reason. One of the principal factual distinctions between *Starns* v. *Malkerson*, 326 F. Supp. 234 (Minn. 1970), aff'd, 401 U. S. 985 (1971), and *Vlandis* v. *Kline*, 412 U. S. 441 (1973), both of which upheld durational residence requirements for in-state university tuition,[14] and *Shapiro*, which struck them down for welfare recipients, is the nature of the aid which the State or county provides. Welfare benefits, whether in cash or in kind, are commonly funded from current tax revenues, which may well be supported by the very newest arrival as well as by the longtime resident. But universities and hospitals, although demanding operating support from current revenues, require extensive capital facilities which cannot possibly be funded out of current tax revenues. Thus, entirely apart from the majority's conception of whether nonemergency health care is more or less important than continued education,

[14] In *Vlandis*, while striking down a Connecticut statute that in effect prevented a new state resident from obtaining lower tuition rates for the full period of enrollment, we stated that the decision should not "be construed to deny a State the right to impose on a student, as one element in demonstrating bona fide residence, a reasonable durational residency requirement, which can be met while in student status." 412 U. S., at 452. *Starns* was cited as support for this position.

the interest of longer established residents in capital facilities and their greater financial contribution to the construction of such facilities seems indisputable.[15]

Other interests advanced by the State to support its statutory eligibility criteria are also rejected virtually out of hand by the Court. The protection of the county economies is dismissed with the statement that "[t]he conservation of the taxpayers' purse is simply not a sufficient state interest . . . ." [16] The Court points out that the cost of care, if not borne by the Government, may be borne by private hospitals such as appellant Memorial Hospital. While this observation is doubtless true in large part, and is bound to present a problem to any private hospital, it does not seem to me that it thus becomes a constitutional determinant. The Court also observes that the State may in fact *save* money by providing nonemergency medical care rather than waiting for deterioration of an illness. However valuable a qualified cost analysis might be to legislators drafting eligibility requirements, and however little this speculation may bear on Evaro's condition (which the record does not indicate to have been a deteriorating illness), this sort of judgment has traditionally been confided to legislatures, rather than to courts charged with determining constitutional questions.

The Court likewise rejects all arguments based on

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[15] This distinction may be particularly important in a State such as Arizona where the Constitution provides for limitations on state and county debt. See Ariz. Const., Art. 9, § 5 (State); Art. 9, § 8 (County). See generally Comment, Dulling the Edge of Husbandry: The Special Fund Doctrine in Arizona, 1971 L. & Soc. O. (Ariz. St. L. J.) 555.

[16] The appellees in this case filed an affidavit indicating that acceptance of appellants' position would impose an added burden on property taxpayers in Maricopa County of over 2.5 million dollars in the first year alone. App. 12–17.

administrative objectives. Refusing to accept the assertion that a one-year waiting period is a "convenient rule of thumb to determine bona fide residence," the majority simply suggests its own alternatives. Similar analysis is applied in rejecting the appellees' argument based on the potential for fraud. The Court's declaration that an indigent applicant "intent on committing fraud, could as easily swear to having been a resident of the county for the preceding year as to being one currently" ignores the obvious fact that fabricating presence in the State for a year is surely more difficult than fabricating only a present intention to remain.

The legal question in this case is simply whether the State of Arizona has acted arbitrarily in determining that access to local hospital facilities for nonemergency medical care should be denied to persons until they have established residence for one year. The impediment which this quite rational determination has placed on appellant Evaro's "right to travel" is so remote as to be negligible: so far as the record indicates Evaro moved from New Mexico to Arizona three years ago and has remained ever since. The eligibility requirement has not the slightest resemblance to the actual barriers to the right of free ingress and egress protected by the Constitution, and struck down in cases such as *Crandall* and *Edwards*. And, unlike *Shapiro*, it does not involve an urgent need for the necessities of life or a benefit funded from current revenues to which the claimant may well have contributed. It is a substantial broadening of, and departure from, all of these holdings, all the more remarkable for the lack of explanation which accompanies the result. Since I can subscribe neither to the method nor the result, I dissent.

# MISSISSIPPI v. ARKANSAS

## ON EXCEPTIONS TO SPECIAL MASTER'S REPORT

No. 48, Orig. Argued December 5, 1973—Decided February 26, 1974

In this boundary dispute between Arkansas and Mississippi over an area known as Luna Bar in the abandoned bed of the Mississippi River between the upstream and downstream ends of Tarpley Cut-off, where Arkansas' Chicot County and Mississippi's Washington County adjoin, the report of the Special Master is adopted, in which he found that Luna Bar was formed by accretion resulting from the gradual westward movement of the Mississippi River, and is therefore part of the State of Mississippi, and not by avulsive process as claimed by Arkansas. Pp. 291–294.

BLACKMUN, J., delivered the opinion of the Court, in which BURGER, C. J., and BRENNAN, STEWART, WHITE, MARSHALL, POWELL, and REHNQUIST, JJ., joined. DOUGLAS, J., filed a dissenting opinion, *post*, p. 294.

*Mitchell E. Ward* argued the cause for plaintiff on Exceptions to the Report of the Special Master. With him on the brief were *Albioun F. Summer*, Attorney General of Mississippi, and *Martin R. McLendon*, Assistant Attorney General.

*William H. Drew* argued the cause for defendant. With him on the brief was *Jim Guy Tucker*, Attorney General of Arkansas.

MR. JUSTICE BLACKMUN delivered the opinion of the Court.

Mississippi, prompted by the pendency of private title litigation in the Arkansas courts,[1] instituted this origi-

[1] See *Arkansas Land & Cattle Co.* v. *Anderson-Tully Co.*, 248 Ark. 495, 452 S. W. 2d 632 (1970), a 4–3 decision of the Supreme Court of Arkansas.